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## SECTION 1800 – HISTORICAL, ARCHAEOLOGICAL AND CULTURAL RESOURCES (DRAFT)

### SECTION 1810.00 - INTRODUCTION

This section includes information needed for projects that will affect historic and archaeological cultural resources. Requirements often overlap with those for projects affecting public lands ([Section 1700](#)). See also [Section 2100](#) for related information on visual quality impacts.

**1810.01 Abbreviations and Acronyms.** Abbreviations and acronyms used in this section are listed below. Others are found in the general list in the appendix.

ACHP	Advisory Council on Historic Preservation
Highway Archaeologist	ITD HQ Section Cultural Resource Specialist
ISOC	Idaho State Office of Community Development
ISHS	Idaho State Historical Society
ISHPO or SHPO	Idaho State Historic Preservation Officer
THPO	Tribal Historic Preservation Officer
TCP	Traditional Cultural Property
MOU/MOA	Memorandum of Understanding/Memorandum of Agreement
NHPA	National Historic Preservation Act
NEPA	National Environmental Protection Act

### SECTION 1820.00 - APPLICABLE STATUTES AND REGULATIONS

Projects that involve impacts to historic, or cultural, resources are subject to the principle state and federal regulations summarized below. Laws and regulations that apply to historic and archaeological sites on public lands are listed in [Section 1700](#).

**1820.01 National Environmental Policy Act.** The National Environmental Policy Act (NEPA), 42 USC Section 4231, requires that all actions sponsored, funded, permitted, or approved by federal agencies undergo planning to ensure that environmental considerations such as impacts related to historic and cultural resources are given due weight in project decision-making. Federal implementing regulations are 40 CFR 1500-1508 (CEQ). CEQ rules include sections on urban quality, historical and archaeological cultural resources, and the design of the built environment. For details see [Section 200](#).

**1820.02 National Historic Preservation Act, Section 106 and Implementing Regulations (NHPA).** The National Historic Preservation Act of 1966, as amended (16 USC 470f, Section 106), requires federal agencies including FHWA to take into account the effects of a project on properties included in or eligible for inclusion in the National Register of Historic Places and, to the maximum extent possible, complete planning and actions necessary to minimize harm to any National Register eligible property. Prior to approving the project, the agency must give the Advisory Council on Historic Preservation a reasonable opportunity to comment.

This “Section 106 process” is designed to identify potential conflicts between the historic preservation concerns and the needs of federal agency undertakings, and to resolve such conflicts. The agency official must consult with the State Historic Preservation Officer (SHPO), the Tribal Preservation Officer (THPO), and other interested persons and parties during the early stages of planning. Properties must be adequately identified and considered. The implementing regulations of the Advisory Council on Historic Preservation, Protection of Historic Properties (36 CFR 800), focus on preservation options including avoidance, rehabilitation, modified use, marking, and relocation. New regulations took effect January 11, 2001. ( <http://www.achp.gov> )

**1820.03 Department of Transportation Act, Section 4(f) and Implementing Regulations.** Protection of certain public lands and National Register eligible or listed historic and prehistoric properties was originally mandated in Section 4(f) of the 1966 Department of Transportation Act. This section was repealed in 1983 and later codified without substantive changes as 49 USC 303. However, it is still referred to as Section 4(f) in the FHWA Environmental Procedures (23 CFR 771) and by ITD staff. Section 4(f) declares it a national policy to preserve, where possible, “the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” Highway projects can use these special lands only if there is no feasible and prudent alternative and the sponsoring agency demonstrates that all possible planning to minimize harm has been accomplished. Federal implementing regulations are at 23 CFR 771.135. For details, see [Section 1800](#).

**1820.04 DOT Design, Arts, and Architecture Program.** To further implement NEPA, Sections 106 and 110 (16 USC 470(f)(h-2)) and Section 4(f), the U.S. Department of Transportation inaugurated its Design, Arts, and Architecture in Transportation Program in 1978. Outlined in DOT Order 5610.1C, revised Attachment 2, the program requires that environmental impact statements document the consideration of design quality in projects which involve public use areas or sensitive locations such as parks or historic districts.

**1820.05 Inter-modal Surface Transportation Efficiency Act (ISTEA).** ISTEA (1991) established a Transportation Enhancement Program (23 U.S.C. 101(g)-133(b)), which offers broad opportunities and federal dollars to take unique and creative actions to integrate transportation into communities and the natural environment. Eligible activities include: acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, preservation of abandoned railway corridors (including the conversion and use for pedestrian or bicycle trails), control and removal of outdoor advertising.

**1820.06 TEA-21 Transportation Equity Act for the 21st Century (TEA-21).** The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) continues the national transportation policy directions established by ISTEA. TEA-21 was enacted June 9, 1998 as Public Law 105-178. TEA-21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998- 2003. The TEA 21 Restoration Act, enacted July 22, 1998, provided technical corrections to the original law. ISTEA also mandated creation of a Scenic Byways Program (23 U.S.C. 101(g)-133(e). FHWA has set criteria for designating scenic byways, based upon their scenic, historic, recreational, cultural, archaeological, and/or natural intrinsic qualities. For details on scenic byways, see FHWA's web site: (<http://www.fhwa.dot.gov/> Click on FHWA Programs, then Environment, then Environmental Guidebook, then Scenic Byways. For transportation enhancements information, see: (<http://www.environment/fhwa.dot.gov/guidebook/index.asp>)

**1820.07 Archaeological Resources Protection Act (ARPA).** The Archaeological Resources Act of 1979 (ARPA) applies to archaeological resources on tribal lands and non-tribal lands under federal jurisdiction; for example: the Bureau of Land Management (BLM), National Park Services, or U.S. Army Corps of Engineers (COE). Under this legislation, ITD must apply for and obtain a permit when such resources could be impacted by a project (see [Section 1800](#)).

#### **1820.08 Graves Protection Act.**

TITLE 27 IDAHO STATUTES  
CEMETERIES AND CREMATORIALS  
CHAPTER 5 - PROTECTION OF GRAVES  
27-502. PROHIBITED ACTS.

(1) Except as provided in section 27-503, Idaho Code, no person shall willfully remove, mutilate, deface, injure or destroy any cairn or grave. Persons disturbing graves through inadvertence, including by construction, mining, or logging, shall cause the human remains to be re-interred. The expense for such re-interment shall be at least partially borne by the state historical society.

(2) No person shall:

Possess any artifacts or human remains taken from a cairn or grave on or after January 1, 1984, in a manner other than that authorized under section 27-503, Idaho Code.

(b) Publicly display or exhibit any human remains.

(c) Sell any human artifacts or human remains taken from a cairn or grave.

(3) The provisions of this section do not apply to:

(a) The possession or sale of artifacts discovered in or taken from locations other than cairns or graves or artifacts that were removed from cairns or graves by other than human action; or

(b) Actions taken in the performance of official law enforcement duties.

**1820.09 Other Related Federal Statutes.** For references on the following federal statutes relating to historic, cultural, and archaeological resources, see the glossary, [Exhibit 1800-1](#):

American Indian Religious Freedom Act (1978), (AIRFA)—there are currently no implementing regulations for this act. Issues must be covered by the consultation process.

Antiquities Act (1906)

Archaeological Resources Protection Act (1979), (ARPA)

Native American Graves Protection and Repatriation Act (NAGPRA)

### **SECTION 1830.00 - TECHNICAL GUIDANCE**

**1830.01 FHWA .** FHWA Idaho Division has developed procedures related to Section 106 regarding their oversight and review role and required involvement/coordination with ACHP. Other policies are included in [Exhibit 1800.07](#), and Programmatic Agreements. FHWA Idaho Division has delegated authority to ITD for initial identification and evaluation of cultural resources and consultation

with SHPO for compliance with Section 106 of the National Historic Preservation Act, in accordance with 36 CFR 800.2(a). ITD will obtain opinions of effect from SHPO, prepare the findings of Effect, and transmit this information to FHWA for review of conformation with 36 CFR 800.

**1830.01.01 FHWA Technical Advisory.** FHWA Technical Advisory T6640.8A (*Exhibit 300-4*) gives guidelines for preparing environmental and Section 4(f) documents. For guidance on format and content of Section 4(f) evaluations for historic and archaeological sites, see the Technical Advisory on FHWA's web site: (<http://www.fhwa.dot.gov/> Click on Legislation and Regulations, then FHWA Directives and Policy Memorandums then FHWA Technical Advisories, then T6640.8A.)

**1830.01.02 FHWA Policy Paper.** FHWA Section 4(f) Policy Paper revised June 7, 1989 gives specific information on section 4(f) including a historic background and guidance on applicability, format and content. The Policy Paper can be found in the Environmental Guidebook on FHWA's web site:

<http://www.environment.fhwa.dot.gov/guidebook/index.asp>

## **1830.02 Idaho Transportation Department.**

**1830.02.01 ITD Policy.** It is ITD policy to avoid adverse impacts, where possible, to cultural resources (prehistoric and historic archaeological sites, historic structures or traditional cultural properties) in planning, constructing, operating, or maintaining the state's transportation system. If it is not possible to avoid adverse impacts, ITD will minimize and mitigate the impacts. The ITD policy will be implemented by the federal Section 106 and 4f review process or, in the case of state-funded projects, by an equivalent process. The following procedures summarize the compliance process and may also be used for guidance by consultants preparing documents for compliance. Except where noted, these procedures apply to all projects regardless of funding source. Use the following as a guideline, along with the federal regulations.

### **1830.02.02 ITD Cultural Resource Report.**

The Cultural Resource Survey

Review the Programmatic Agreement (PA) dated July 18, 2000, that sets forth the process the FHWA/ITD/ISHS and the Advisory Council uses to meet their responsibilities for undertakings pursuant to Section 106 and, in consultation with headquarters, determine whether your project meets the exemption. If the project is included in one of the types of exempted activities listed in the PA, the District must document this determination in the Environmental Review Summary. The District must then coordinate with affected federal, state and local agencies, tribe(s) and interested parties on the project.

If the project does not fall under the Programmatic Agreement (*Exhibit 1800-18*), the 106/4(f) process must be followed. Early in the project development process, the District can hire a cultural resources consultant to perform a cultural resources survey if HQ Cultural Resources Staff is unavailable to complete the work. The survey must be conducted by a professional (consultant or in-house staff) meeting the U.S. Secretary of the Interior's standards. The District provides the consultant with a full description of the proposed project and its limits – staked on the ground and mapped, if possible – so that the survey can be conducted accurately. A pre-field background research through the records at ISHS and other appropriate state and federal agencies is required.

The consultant prepares an Archaeological and Historical Survey Report (AHSR) of the findings which:

1. Includes a description of the proposed highway project.
2. Identifies the project location, both in narrative and on maps, preliminary design sheets, photos and any other documentation necessary to show the boundaries of the area of potential effects.
3. Describes the historic/ethnographic/prehistoric background of the area, as appropriate.
4. Incorporates tribal input and comments if project occurs on tribal or ceded lands or involves TCPs off tribal lands.
5. Describes the geographic setting, including topography, land use, vegetation, ground surface conditions, and soil types.
6. Identifies any previously recorded historic and archaeological properties including TCPs within .5 mile of the physical disturbance of the project that are listed or eligible for listing on the National Register of Historic Places and other inventories. Reassess any within the APE that were recorded more than 7 years ago.
7. Identifies, documents and maps any cultural properties found as a result of the survey and includes maps, sketches, photos and other pertinent records addressing the location, scope and eligibility of identified resources. The consultant completes all forms necessary for resources identified during the survey and for previously identified/reassessed sites.
8. Provides a description of each cultural resource and its specific location, an opinion on its National Register eligibility, the project's effects on it, and, in the case of archaeological sites, whether there is a need for further testing or evaluation to determine eligibility.
9. Recommends possible avoidance treatment, mitigation and measures to reduce adverse effects to listed/eligible historic properties.
10. Provides bibliographic references.
11. Specifies types of study tasks performed (e.g., archival research, ground survey methods) and the date of the survey.
12. Identifies cultural properties less than 50 years old within the APE and Notes But Not Records (NBNR) them.

The report is prepared even if no cultural properties are found during the survey. For additional information, refer to National Register Bulletin No. 24: Guidelines for Local Surveys: A Basis for Preservation Planning and the SHPO's instructions on completing the IHSI and IMACS.

Once the 106 report is completed, the consultant submits two copies of the Archaeological and Historic Survey Report (including the relevant site forms) to the appropriate District. The District then forwards the copies to the Highway Archaeologist for review. (All cultural resources reports are first submitted to ITD's Highway Archaeologist for review and approval before submittal to SHPO. SHPO will not act on reports submitted directly by any other party.) If tribal participation and input has occurred, the tribe(s) will receive copies for review and comment. The Highway Archaeologist will coordinate the review process within federally-specified timeframes and incorporate any tribal comments received therein. Should a THPO be involved, the THPO will serve in the stead of SHPO. Ongoing consultation throughout the 106 process and post-106 processes will ensure ITD acknowledgement of tribal concerns.

The Highway Archaeologist reviews the survey report for accuracy and completeness. If there are revisions required, a cover letter outlining the revisions is attached to the report and returned to the consultant via the District. Copies of the cover letter are routed to the District, and internally. Re-review commences upon receipt of the revised report. The Highway Archaeologist has 30 days to review a cultural resource report. Should there be a request for revisions, the 30-day review period is reinstated when the revised report is received by the Highway Archaeologist. Reviews continue until a satisfactory final report is submitted.

**1830.02.03 Findings of Eligibility and Effect (1502).** When a report is approved, the Highway Archaeologist evaluates the identified cultural resources for National Register eligibility using the criteria of eligibility set forth in the Section 106 regulations. S/he then records the eligibility, the extent of the project's impacts, and all other pertinent information on the ITD 1502 form (See [Exhibit 1800-7](#)). There are three possible effect determinations set forth in the Section 106 regulations (36 CFR 800.4 and 800.5):

- 1.No historic properties affected: either there are no significant properties present or there are significant properties present but the undertaking will have no effect upon them.

- 2.There is an effect on a historic property, but the effect is not considered adverse,

- 3.Historic properties are adversely affected: the project will adversely affect one or more historic properties.

The 1502 and the cultural resources report are then sent to the SHPO/THPO review and comment. Each has 30 days to review the document and offer comments. Should either request further information or revisions from the consultant via the State Highway Archaeologist, the 30-day review period is reinstated at the time they receive the revisions.

Once the SHPO/THPO and the appropriate tribes have reviewed and commented on a project, the report is forwarded to any federal agency that may be involved in the project.

The ITD/SHPO 'Determination of Significance and Effect' 1502 form is [Exhibit 1800.07](#)

For state-funded projects involving federal permits, a 106 report is submitted for review and the Highway Archaeologist obtains the SHPO/THPO concurrence. The Highway Archaeologist consults with the District and interested parties with Memorandum of Agreement (if an Adverse Effect occurs) and Determination of Adverse Effect documents.

For state-funded projects *without* federal nexus (i.e., funding, permits, land use, etc.), the Highway Archaeologist is notified. The Highway Archaeologist reviews the project plans and determines whether a cultural resource survey is required. If a cultural resource survey is required and it is determined that significant cultural resources are present and affected, the SHPO/THPO will be consulted and, if necessary, an MOA developed. This action indicates ITD's good faith effort to identify and avoid significant cultural resources regardless of the projects 'federal-undertaking' status. Section 4(f) is *not* triggered by state-sponsored projects because no US DOT funds are involved

**1830.02.04 Determination of Adverse Effect.** If listed or eligible properties will be adversely affected by the project, a Determination of Adverse Effect is written. While the 1502 reports the eligibility of the resources and the effect of the project upon them, the Determination of Adverse Effect elaborates on these points in a narrative and explores alternatives that avoid or minimize harm to the affected resource. This document fulfills the requirements of 36 CFR 800.6 which states that the federal agency must "consult with the SHPO/THPO and other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties." The Determination of Adverse Effect is sent to the ACHP via the FHWA as an invitation for the ACHP to participate. (See [Exhibit 1800-8](#)).

**1830.02.05 Memorandum of Agreement.** If there is an adverse effect, if the Advisory Council on Historic Preservation objects to a determination of no adverse effect, or if any consulting party and the ITD agree on stipulations placed on the project, the Highway Archaeologist consults with the District, the FHWA, the SHPO/THPO, interested parties, and the Council to resolve these issues by means of a Memorandum of Agreement (36 CFR 800.6) (See [Exhibit 1800-9](#)). In the case of an archaeological site, mitigation of adverse effects usually involves excavation of the site and preparation and publication of a report of excavation. In the case of a historic architectural property, mitigation measures can be more complex. Other measures may be appropriate and would be developed, case-by-case, in consultation with the SHPO/THPO and interested parties. The District may initiate a request to the



Highway Archaeologist for supplemental consultant work that will require additional funds and an extension of the consultant's schedule and scope of work.

In the Determination of Adverse Effect, ITD (Headquarters Environmental Manager and Highway Archaeologist), FHWA, SHPO/THPO, interested parties, and the Advisory Council on Historic Preservation confer to find ways to avoid minimize or mitigate adverse effects. In the Memorandum of Agreement (MOA), the measures that ITD will take to minimize, avoid, or mitigate the adverse effect are outlined. The project consultant, in consultation with the Highway Archaeologist, SHPO/THPO, the Council, interested parties, and the District, prepares the MOA. The Headquarters Environmental Manager signs the MOA for ITD; it then goes to SHPO and any designated interested parties for signatures; and is then sent to FHWA to forward to The National Historic Preservation Council for its possible participation. The Council can accept the MOA, request changes, or opt to issue written comments. When the MOA is executed, ITD proceeds with the project under the terms of the MOA. The executed MOA becomes part of the project's environmental documentation. FHWA forwards copies of the fully-signed MOA to ITD and decides if there is a need for completion of the 4(f) document. Once the 4(f) document is completed, it is forwarded to FHWA, and to other parties, as appropriate.

For state-funded projects with federal permits, ITD Highway Archaeologist consults with SHPO and considers SHPO's comments when determining review procedure. Determinations of Adverse Effects and MOAs made under the Section 106 review process satisfy cultural resource mitigation.

The Section 106 review process is concluded unless unexpected cultural materials are located during project construction activities. If this occurs, work is halted, the area secured, and the HQ Highway Archaeologist/SHPO/THPO is immediately contacted.

**1830.02.06 Section 4(f) Evaluation.** The Section 4(f) evaluation (required by US Department of Transportation/FHWA) is a separate analysis of impacts to cultural resources on or eligible for the National Register that could result from one or more alternatives being considered for a transportation project. The 4(f) evaluation must identify the resources being used by the project and present and examine alternatives that avoid that use. Avoidance alternatives that do not meet the purpose and need can be discarded. **The preferred alternative must be proven to be the most prudent and feasible alternative that causes the least harm to cultural resources.** (See [Exhibit 1800-10](#)).

For such projects, a **Section 106 conclusion of “no adverse effect” or “no historic properties affected” does not waive the need to prepare Section 4(f) documentation.** However, FHWA may consider this a de minimis impact under the SAFETEA-LU provisions. Applicability of ‘use’ determines the need for 4f documentation. Use occurs when land is permanently incorporated into a transportation facility, when there is a temporary occupancy of land that has an adverse effect or when the proximity of the project substantially impairs the attributes that qualify the resource for listing on the National Register of Historic Places.

For projects having a minor impact on certain types of properties or requiring the use of historic bridges, Section 4(f) requirements may be met using FHWA's nationwide Programmatic 4(f) evaluation and approval documents. The full text of the 4(f) programmatic evaluations as well as guidance on their use can be found in the Environmental Guidebook on FHWA's website. Templates for the programmatic evaluations of projects with minor involvements with historic sites and projects that necessitate the use of historic bridges can be found in 1800.08 Exhibits section at the end of this chapter.

Historic Sites – Final Nationwide Section 4(f) Evaluation and Approval for Federally- Aided Highway Projects with Minor Involvements with Historic Sites (December 23, 1986). ([Exhibit 1800-12](#))

Historic Bridges – Programmatic Section 4(f) Evaluation and Approval for FHWA Projects that Necessitate the Use of Historic Bridges (July 5, 1983). ([Exhibit 1800-11](#))

Bikeways—Section 4(f) Statement and Determination for Independent Bikeway or Walkway Construction Projects.

Public Parks—Final Nationwide Section 4(f) Evaluation and Approval for Federally-Aided Highway Projects with Minor Involvements with Public Parks, Recreation Lands, and Wildlife and Waterfowl Refuges.

These programmatic evaluations lessen the time necessary for coordination. They do not undergo the 45 day legal sufficiency review or the 45 day review by the Department of the Interior. However, the amount of documentation required to prove the necessity of use is equivalent to that required for a “regular” 4(f) evaluation.

### **1830.02.07 ITD Historic Bridge Procedure**

#### **Introduction**

Bridge replacement projects, like other ITD projects, must undergo the 106 and 4(f) processes. This section provides guidance on the preservation of historic highway bridges. Alternatives to demolition are covered for situations where on-site preservation is not possible. The bridges covered by procedures contained herein are either listed in or eligible for listing in the National Register of Historic Places, and are part of either a federal aid highway system or a state or local highway system or are making use of Federal Aid Highway Bridge Replacement and Rehabilitation Funds. The Highway Archaeologist in ITD maintains the Historic Bridge Inventory that is periodically updated by the Idaho State Historical Society.

Idaho Transportation Department (ITD) policy is to follow the principles and guidelines provided herein even when no federal funds, licenses, or other assistance is required.

Many Idaho bridges are significant for their historical, architectural, or engineering features. The Federal Highway Administration (FHWA) encourages preservation under the Intermodal Surface Transportation Efficiency Act where federal funds are available to states to rehabilitate and otherwise preserve bridges of historical and engineering significance.

In the 1980's, the Idaho State Historical Society in cooperation with ITD and the Historic American Engineering Record (HAER) of the Department of the Interior, conducted a systematic inventory of historic bridges built prior to 1945 throughout the Idaho. The inventory, which was authorized by the Surface Transportation Act of 1978 (Public Law 95-599), was funded by ITD and ISHS. An update to this initial inventory is currently being conducted by ISHS in 2002.

Since bridges less than 50 feet in length that possess engineering or historical significance are rare, almost all the bridges in the inventory are greater than 50 feet long.

#### Legislative Background

The following laws and regulations apply directly to federal agency actions and to state or local projects that involve federal funds or permits, especially as they relate to historic bridge preservation.

*National Historic Preservation Act of 1966 (NHPA), as amended (16 USC 470, et seq.)*

*National Environmental Policy Act (NEPA), 23 CFR Part 771.*

*Section 4(f) of the Department of Transportation Act (49 USC 303)*

FHWA has developed a nationwide programmatic Section 4(f) evaluation. Details for using the programmatic Section 4(f) are contained in ITD's EP Manual Section 455.

*Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Public Law 100-17)*—This Act mandates that states give special consideration to rehabilitating, reusing, and preserving historic bridges. STURAA legislation makes funds which otherwise would have been used for bridge demolition available for actions to preserve a historic bridge or reduce the impact of a project on the historic bridge.

If a historic bridge can no longer be used on a public road, reasonable costs associated with preservation could include modification for recreational use, relocation, etc. FHWA will determine the reasonable level of funding not to exceed the estimated cost of demolition.

STURAA legislation also requires that, prior to demolition of a historic bridge, the state shall make an effort to market (sell or donate) the bridge to a state or local government agency or responsible private entity. Specifics for marketing are covered later in this section.

NOTE: Refer to Engineering Publication 2601 Right-of-Way for further guidance pertaining to any transfers or marketing of surplus historic bridges.

*Intermodal Surface Transportation Efficiency Act of 1991*

Historic bridge preservation and rehabilitation projects qualify for federal funding under several enhancement categories. Funding may be used for specific transportation projects and also for preservation activities. This legislation provides for more flexible design standards in order to preserve historic structures.

#### Preservation Alternatives

Many historic bridges have become or are becoming structurally deficient, physically deteriorated, or functionally obsolete. In order to maintain the transportation network, these bridges must be replaced with new bridges or rehabilitated to carry out their intended function safely. Sometimes it is feasible to build a replacement bridge on a new alignment, thereby bypassing the old bridge. However, when replacement bridges must be built on an existing alignment, the old bridge is either demolished or moved to another location. Some bridges can be rehabilitated to meet modern structural standards and traffic requirements.

If a bridge remains in place, it may receive preservation treatment, it may be converted to an alternative use, or it may continue to deteriorate (the latter two scenarios may constitute an adverse effect under 36 CFR FR 800.5). Bridges can be converted to non-vehicular intermodal transportation uses such as pedestrian walkways or bikeways, or non-transportation uses such as craft centers, museums, restaurants, housing, and other architectural conversions.

Demolition should be considered the last resort. In pursuing bridge demolition, a Determination of Adverse Effect, a Memorandum of Agreement, and a 4(f) evaluation must be submitted. Under Section 106, mitigation of the adverse effect of demolition can be



accomplished through procedures (such as photos, historic context narratives, models, etc.) agreed upon in consultation with SHPO and the Advisory Council on Historic Preservation through execution of the Determination of Adverse Effect and the Memorandum of Agreement. See *Exhibit 1800-11*. However, under 4(f), it must be proven that demolition of the bridge is required, and that there are no feasible and prudent alternatives to its removal.

#### Basic Rehabilitation Concepts

Each historic bridge should be evaluated on its own merits. The following concepts summarize features of rehabilitation included in The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and TRB's Guidelines for Rehabilitation of Historic Bridges. Copies of these publications are available through ITD HQ Archaeologist. Consider other alternatives only when on-site rehabilitation is neither feasible nor prudent.

1. Make every reasonable effort to maintain the historic bridge in useful transportation service. Give primary consideration to on-site rehabilitation.
2. Respect the historically significant qualities of a bridge, its site, and its environment. Avoid removing, concealing, or altering any historic material when possible. Avoid proposed alterations that have no historical basis and that seek to create a false historical appearance. Wherever possible, make additions or alterations in such a manner that their subsequent removal will not impair the essential form and integrity of the bridge.
3. Changes that may have taken place in the course of time may be evidence of the history and development of a bridge, its site, and its environment. Recognize and respect that these changes may have acquired significance in their own right.
4. Repair rather than replace deteriorated structural members and architectural details. If a structural replacement is a necessary, match new material to original materials being replaced in design, color, texture, and other visual qualities. Use surface cleaning techniques that will not damage historic materials.
5. If rehabilitation is not possible, consider a non-vehicular (intermodal) transportation use of the structure at its original site or at a new location. This may involve marketing the structure to a responsible party for such an adaptive use. The marketing process is required in cases where demolition is proposed as an alternative. This transfer is an adverse effect unless a contract for continued preservation is signed by SHPO and the purchaser and periodic inspection of the bridge is arranged to ensure compliance with the contract. Bridges that continue to serve transportation purposes on less demanding public roads may continue to be eligible for federal highway funding.
6. If the existing structure cannot be rehabilitated and reused, then it must be documented and replaced. Consider contemporary designs for new bridges located in historic regions and contemporary designs for proposed additions and alterations to historic bridges: these designs shall be compatible with the size, scale, visual quality, and character of the historic bridges, and environment.

#### Guidelines for Rehabilitation

The following are guidelines for the rehabilitation of historic bridges for structural upgrading, geometric modification, and materials repair and maintenance. Budgetary constraints, geographic location, and good judgment will determine which apply.

#### Structural Upgrading

- A. Identify the structural system and its historically significant features. Use nondestructive testing techniques.
- B. Explore passive solutions that limit the live load by restricting vehicles. Examples include load posting, signaling, and channelization.
- C. Respect the structural system and retain its visual characteristics if modifications are necessary.
  1. If possible, retain the load-carrying system in its original configuration.
  2. If possible, reduce the dead load by providing a lighter deck system.
3. If the load-carrying system must be altered, retain the character-defining visual qualities of the original structural system. The visual impact to systems that are modified can be minimized by using structure continuity and king post truss beam reinforcement; changing the configuration of isolated members or adding helping structures; adding supplemental members under the deck of the structure.
- D. When more visually intrusive structural modifications are required, keep them as inconspicuous as possible, and try to preserve the primary view and impact only secondary views.
  1. Roadway travelers see traffic carrying bridges from afar, in elevation, and while traveling on the bridge deck. Make modifications with this in mind.
  2. Where the primary view is from below the bridge (e.g., canal bridges no longer in vehicular service), make modifications accordingly.
- E. Design modifications with the least possible loss of historic material. Do not obscure, damage, or destroy the historically significant features of the bridge.
- F. Clearly differentiate structural modifications or helping structures from the historic bridge. The design should be compatible in terms of mass, materials, scale, and detail but should not dominate the historical portion.

G. Design and install traffic railings, or safety barriers, to avoid or minimize visual impacts to the character-defining features of the bridge.

H. Replace deteriorated structural elements in kind or with a material that duplicates the visual appearance of the original element.

### ***Geometric Modifications***

A. Determine realistic needs for geometric parameters in light of connecting highways, projected traffic volumes, accident history, and the nature of future traffic needs.

B. Explore passive (off-bridge) solutions.

1. Adjust alignment of the approaches and/or, restrict the bridge to one-way traffic.

a. Create holding lanes for traffic at the approaches to a one-lane bridge with appropriate provisions for safety.

b. Leave the historic bridge in place for one lane of traffic and move another visually compatible historic bridge to an adjacent site to carry the second lane.

c. Leave the historic bridge in place for one lane of traffic and construct a visually compatible new bridge on an adjacent site for the second lane.

2. Adjust the flow of approaching traffic by restricting vehicles, restricting speed, or installing signs and traffic signals.

C. Alter the geometric configuration of the bridge to remedy geometric deficiencies.

1. To increase the vertical clearance on through bridges, reduce the depth of the portal frames and sway frames, with minimal destruction of the historic materials.

2. To increase the vertical clearance on grade-separation structures, raise the superstructure or lower the roadway.

3. To increase the roadway width, some types of structures can be modified (e.g., multi-girder, some concrete and stone bridges).

Design modifications to be compatible with the appearance and scale of the original bridge.

a. Provide sidewalks external to the bridge for pedestrian safety.

b. Widen the bridge by cantilevering a new deck from either side of the existing structure, where structurally feasible and aesthetically and historically appropriate.

### ***Materials Repair and Maintenance***

A. Identify features that are important in defining the overall historic character of the bridge. Consult an architectural historian or similar professional with expertise in historic bridge preservation/ rehabilitation.

B. Repair historic materials, if possible. If replacement of a feature is necessary, replace in kind or with a compatible substitute material.

1. Concrete: Superstructure and substructure

a. Damage caused by drainage and vegetation

(1) Provide proper deck drainage systems that do not damage or promote deterioration of the superstructure or substructure.

(2) Remove vegetation growing on bridge superstructure or substructure.

b. Cleaning

(1) Clean concrete only when necessary to halt deterioration or to remove heavy soiling.

(2) Clean concrete with the least destructive method possible.

(3) Use proposed cleaning method on test patches to determine long-range detrimental effect of cleaning.

c. Crack sealing

(1) Remove deteriorated concrete by carefully hand raking cracks to avoid damaging sound areas.

(2) Material used to seal cracks should match old concrete in composition, color and texture.

d. Repair of deteriorated sections

(1) Replace extensively deteriorated or missing features in kind or with a compatible substitute material.

(2) Avoid applying non-historic coatings, such as stucco, gunnite, and sealants to concrete surfaces.

2. Metals

a. Cleaning -Identify metallic composition prior to cleaning then test in patches for least destructive cleaning method. Use the least destructive cleaning methods possible to remove paint buildup and corrosion. For example, if hand scraping and wire brushing prove ineffective, low pressure dry grit blasting may be used as long as it does not damage the structural integrity of the bridge.

b. Repaint with colors appropriate to the history of the bridge.

c. Replace deteriorated or missing decorative elements in kind or with compatible substitutes.

3. Wood

a. Repair historic wood features by patching or reinforcing, using recognized preservation techniques.

b. Replace irreparable historic wood features in kind. If replacement in kind is not possible, use substitute materials that are compatible in texture and form, and that convey the same visual appearance as the original.

### **Project Assessment, Selection of Alternatives, and Documentation**

[Section 300](#) and [Section 500](#) and [Exhibit 300-3](#) of this manual provide guidance on various aspects of project scoping and development, including the environmental process and preparation of environmental documents. This process should be an effective

tool for decision-making. Additional information related specifically to historic bridges follows. Contact the ITD HQ Architectural Historian for assistance.

#### Preliminary Assessment

Historic bridge rehabilitation and replacement projects can be complex and sometimes controversial. A preliminary planning meeting among representatives from the offices named below may facilitate the planning process.

- A. ITD Environmental Office.
- B. ITD Bridge Section.
- C. Idaho State Historical Society (SHPO).
- D. FHWA (when the project involves federal funds).
- E. Tribal Historic Preservation Officer or other Tribal representatives

The meeting should occur after the need for the project and a proposed budget are identified. The purpose of the meeting is to discuss appropriate alternatives for the prospective project and eliminate all those that are not prudent or feasible.

#### Review of Alternatives

A management review of possible alternatives, as previously discussed, should be performed to determine whether sufficient information is available to reject some alternatives. If an alternative is selected that does not adversely impact historic features of the bridge, the process is greatly simplified because Section 4(f) procedures do not apply.

##### A. Alternatives with adverse impacts to the historic bridge:

1. The existing bridge is demolished and replaced with a new bridge at the same location.
2. The existing bridge is marketed, bought and moved to a new location or used for an incompatible purpose.
3. The existing bridge is left in place, but the new bridge is built within view, impairing its visual characteristics.
4. Rehabilitation to the existing bridge impairs its historical integrity, as determined by procedures implementing National Historic Preservation Act. (See [Exhibit 1800-2](#) for Section 106 Criteria.)

##### B. Alternatives that avoid adverse impacts to the historic bridge:

1. Do nothing.
2. Build a new structure at a different location without affecting the historic integrity of the old bridge, as determined by procedures implementing NHPA.
3. Rehabilitate the historic bridge without affecting the historic integrity of the structure, as determined by procedures implementing NHPA.

#### Determination of Adverse Effect

**Known historic properties:** Conduct a cultural resource analysis of alternatives to determine the effect of the project on known historic property or properties. *For historic bridges*, the project manager, with the assistance of the Highway Archaeologist or Architectural Historian, assesses potential effects to the bridge according to the criteria of adverse effect.

**Historic structure discovered during study:** (Cultural resource consultant assists via discipline study.) The Architectural Historian evaluates identified historic structure using the criteria of eligibility and effect, and consults with the SHPO/THPO and the District to consider ways to avoid or mitigate adverse effects.

The Highway Archaeologist or Architectural Historian makes a determination of effect and requests concurrence from SHPO/THPO. If the effect is adverse and there is no prudent or feasible alternative, the Highway Archaeologist, FHWA, SHPO/THPO and other interested parties develop a Memorandum of Agreement (MOA) to identify appropriate measures to mitigate adverse effects.

**Determination of no adverse effect:** If it is determined and documented that project alternatives do not adversely affect the historic integrity of the bridge, Section 4(f) procedures may not apply.

**Determination of adverse effect:** If it is determined and documented that project alternatives adversely affect the historic integrity of the bridge, a Determination of Adverse Effect detailing the affect, alternatives to that effect and why the affect cannot be avoided must be prepared. Following this, an MOA will be executed specifying measures to mitigate the adverse effects of the project on the historic bridge. The MOA will become part of the environmental document. (See [Exhibit 1800-9](#) for a sample MOA.) The 4(f) completes the process, proving that there is no prudent or feasible alternative to the adverse effect.

If the decision is made to select an alternative that has no effect on the historic bridge, document the conclusion in the Final Environmental Impact Statement.

#### Marketing

When a bridge must be demolished, or when rehabilitation of it will impair its historic integrity and it is listed or eligible for inclusion in the National Register of Historic Places, appropriate environmental documentation (Draft EIS or Environmental Assessment [EA], Section 4(f), Section 106) must be prepared (see [Section 1700](#)).

Where demolition is being considered as the preferred alternative, prepare a marketing plan (in coordination with, SHPO/THPO, FHWA, and Council) to describe availability of the bridge for other uses including nonpublic or non-motorized vehicular transportation. Incorporate provisions of the marketing plan in a proposed Memorandum of Agreement (MOA). After obtaining approval from OSC Real Estate Services, SHPO/THPO, and the Attorney General's Office, submit the MOA to FHWA for approval and forwarding to the Council. The marketing effort will normally be concurrent with preparation of the Final EIS or EA and 4(f) evaluation and should be completed at the same time as the beginning of the Final EIS. The approved MOA and results of the marketing effort are included in the revised EA and Finding of No Significant Impact (FONSI), or the Record of Decision (ROD).

The marketing plan shall:

A. Be prepared by the current owner and contain a summary statement of the historic significance of the structure, existing structural conditions and needed repairs, estimated costs for rehabilitation alternatives, potential traffic or non-traffic uses and what preservation work is needed, structural dimensions, maintenance requirements, and location map.

B. Describe public funding available to the recipient for relocation and/or rehabilitation work. Reasonable rehabilitation and/or relocation costs, when the bridge is to serve other than motorized public traffic, are reimbursable up to the estimated cost of demolition. Any additional cost will be the responsibility of the recipient. In other words, the FHWA and the current owner of the structure are responsible to provide funds up to the estimated cost of demolition, rehabilitation, and/or relocation. If the recipient proposes to relocate the structure for motorized use and would be eligible for federal aid, reimbursement can be made without reference to demolition.

C. State that recipients must agree to:

1. Provide a comprehensive plan for the preservation and future use of the structure, including any desired modification and estimated cost of rehabilitation.
2. Maintain the structure and the features that give it historic significance according to prescribed standards.
3. Assume all future legal and financial responsibility for the structure, including "hold harmless" agreements to the current owner, ITD, and FHWA, and the posting of a performance bond.
4. Provide proof of their ability to assume the financial and administrative responsibilities of bridge ownership throughout its existence.

D. Note that any bridge preserved with federal funding shall thereafter not be eligible for any other highway funds pursuant to Public Law 100-17, Section 123(f) (Historic Bridges).

E. Provide for advertising the availability of the bridge to interested parties for at least 60 days prior to decision to remove or demolish the structure. Within the time period, potential recipients should forward proposals on the structure to the bridge owners. Longer response periods may be considered for more complex projects. Shorter periods may be possible with approval by SHPO/THPO, ITD, and FHWA.

1. Develop advertisements to be placed in newspapers and other media. They should include the structure location, type, dimensions, existing condition and needed repairs, and a date by which interested parties should present their proposed plan. All ads should state the estimated cost of demolition, the availability of public funds, potential options for rehabilitation or relocation, and maintenance responsibilities.

2. Submit the ad copy to ITD/FHWA for approval prior to publication in order to ensure compliance with requirements.

3. Place the ads in newspapers that cover a regional area. Transportation or historic publications, trade or planning journals and electronic media should also be considered. Advertising for a minimum of three newspaper circulations, including one Sunday, and also in the area legal paper, is recommended. Send letters soliciting interest to state and local agencies, historical societies, and individuals who have expressed interest. Identify the length of time during which formal proposals will be accepted.

4. In the event that no acceptable recipient is found by a good faith effort and within the established response period, the marketing requirements will be considered satisfied.

### **HAER Recording**

The level of recordation will be determined in consultation with SHPO/THPO. For many bridges, recordation will consist of several black and white photos. However, bridges that are historically or architecturally important may need to be documented to a higher standard. HAER recordation has several levels of intensity. Again, SHPO/THPO will determine which level is appropriate. The bridge owner is responsible for providing the recordation material. That material mainly consists of the photographs, historic documentation, and plans requested by SHPO/THPO. Recording must be complete and documentation must be reviewed and accepted by SHPO prior to the beginning of construction.

## Final Disposition

The final disposition of the bridge will be one of the following:

1. Preservation in place through repair, rehabilitation, and/or adaptive reuse.
2. Sale/donation to a responsible party.
3. Documentation and demolition

### 1830.02.08 Material Source Testing: Assessment for Cultural Resource Potential

Sources identified for testing will be submitted to the cultural resource staff for an overview *prior* to drilling or testing.

District Materials will submit:

- (a) a USGS map precisely identifying the location (Section, to the ¼, ¼, ¼, Township and Range) and haul/access road;
- (b) photos of the site including any structures (canals, bridges, buildings, etc) abutting the proposed source perimeter, and
- (c) any additional narrative useful for in-house evaluation

ITD Cultural Resource staff will research and evaluate:

- (a) SHPO site maps for known cultural resources recorded on-site or abutting the location as well as the proposed haul/access road;
- (b) photos and accompanying narrative provided by the District.

All cultural resource surveys conducted for material source sites and/or material source expansions must be submitted to the HQ Cultural Resource Office by the District Materials Engineer. Cultural resource survey reports submitted directly to the HQ Cultural Resource Office by a private material source owner will not be accepted.

**1830.02.09 Material Source Expansion.** Expanding a material source outside of or beyond its originally surveyed boundary requires an archaeological survey and SHPO clearance for the area of proposed expansion. Check first with HQ Cultural Resource Office to determine whether or not the area proposed for expansion has been surveyed.

### 1830.02.10 Staging Areas: Section 106 Cultural Resource Survey.

*All staging, wasting and construction areas require cultural resource clearance.* The contractor is obligated to obtain clearance once the contract has been let. Any land use involving federal funding or permitting is considered a ‘federal undertaking’ and as part of any federally-funded or permitted project, requires clearance under Section 106 and FHWA regulations. Cultural resource clearance may be issued through the existing ITD Programmatic Agreement.

References National Historic Preservation Act of 1966, as amended (16 USC § 470), and the implementing regulations of the Advisory Council on Historic Preservation (ACHP), “Protection of Historic Properties” (36 CFR § 800); Section 4(f) of the U.S. Department of Transportation Act (23 USC § 138; 49 USC § 303) and its implementing regulations (23 CFR 771.135); NEPA (42 USC 4371, 40 CFR 1500). The regulations governing Section 106 are included in Appendix A.

**1830.30 Local Plans and Policies.** City and county comprehensive plans and parks and recreation plans may contain policy and plan guidance on historic resources, sites, and/or structures of local importance. Local governments may also maintain inventories of historic sites. These documents should be considered in preparing the cultural resources section of environmental documents.

## SECTION 1840.00 - TRIBAL CONSULTATION COORDINATION

Early in Scoping, prior to conducting the Cultural Resources Survey, ITD coordinates with the SHPO/THPO and appropriate Tribe(s) to determine potential effects to cultural properties within the project. Meetings held on-site with the Tribes and Districts are an effective way establish tribal involvement and thereby expedite the Section 106 process.

The District provides a copy of the project documentation for each identified tribe containing a detailed project description, legal description, vicinity map, and a list of the Tribes that should be included as potential consulting parties.

If a response from the Tribe(s) is not received within thirty (30) days after the delivery date of the initiation-of-consultation letter, project development (i.e. compliance procedures preceding the cultural resources study) will be allowed to move forward. At each stage of the project, tribes, like SHPO, have 30 days to respond regarding whether they wish to participate. They DO have the option, however, of entering consultation at a later date. *Consultation with the Tribe(s) is initiated early and continues throughout the project.* Therefore, continue to keep them informed of the project, unless they have indicated they have no interest and do not wish to be updated further.

It is federally-mandated that ITD makes a “good faith effort” to involve tribes early and continuously in the process.

36 CFR 800 stipulates tribal notification and as of 1/2001, has reiterated and considerably reinforced its earlier language that consultation take place with federally-recognized tribes impacted by federal undertakings, not only on reservation lands, but also on ceded and aboriginal lands (Advisory Council on Historic Preservation’s website: [www.achp.gov/regs-rev04.pdf](http://www.achp.gov/regs-rev04.pdf))

Consultation takes place for projects on and off of tribal lands, i.e., reservation, ceded, and aboriginal. Early consultation with tribes is the opportunity to identify tribal properties of importance on and off current tribal lands. Many of these sites are unknown to those outside the tribes and therefore it is important to collect information in order to determine any impact or possibility of avoidance. Further, tribal evaluation of the Section 106 report is critical prior to SHPO/THPO review. All efforts to solicit input collect information and consult must be documented and attached to the final report when it is sent to SHPO/THPO.

Federally-recognized Indian tribes are regarded as sovereign nations under federal law. FHWA initiates and carries out initial consultation with tribes. FHWA relies on the Idaho Transportation Department to carry out day-to-day and project-specific consultation. However, FHWA still retains responsibility for the overall consultation, including conflict resolution, and adherence to all Federal requirements and related laws. Therefore, following initial 'government-to-government' consultation between a tribe and FHWA, ITD is responsible for initiating and maintaining a 'good faith effort' (per federal language) to consult and coordinate with appropriate tribes throughout project duration.

The ITD District staff is primarily responsible for ongoing project coordination with tribes whose interests are affected by ITD projects. The STIP process is one of the first consultation avenues between ITD and tribes. Thereafter, establishing and maintaining line and technical staffing relationships for the project's duration elevate tribal coordination above 'special interest group' to that of a sovereign entity empowered with considerable legal authority,

Because each tribal government is unique in its structure and delegation of authority, there is no single protocol for tribal consultation. Satisfying the legal intent of tribal consultation prescribed by law is augmented and reinforced by developing ongoing working relationships characterized by person-to-person, face-to-face communication between districts and tribes. Once initial introduction is made by FHWA, contact is established by district officials with their tribal counterparts. District and tribal officials then identify technical staff who will work together on a project-specific or an ongoing basis. The best means of communication is negotiated according to tribal or staff preference. Again, satisfying the legal intent of tribal consultation is accomplished through mandate procedure as well as 'good faith effort'

If Native American cultural resources are to be adversely impacted by a proposed project, the affected tribe may be invited to participate in the subsequent MOA, Determination of Adverse Effect, and FHWA 4(f) documentation. They are 'consulting parties' under 36 CFR 800.2 and are offered at the time of the MOA signing and again at the DOAE signing, the option to participate or not. They are constrained to the 30-day timeframe, as are all signatories.

Although every tribe is different and consultation with each will be different, the following guidelines set the course:

### ***1. Apply NEPA early in the process***

Both NEPA and the Code of Federal Regulations require early application of the regulations. This may be achieved in many ways. For example, annual meetings with each relevant tribe discussing general project plans for the upcoming year and/or project specific meetings at the beginning of each project are both effective ways to involve the tribes early in the process.

### ***2. Invite Comments***

During the project, the tribes must be consulted at every step, regardless of the location of tribal cultural properties. An initial meeting with the tribes may be held, discussing the particulars of the project. On site discussions are also effective in getting tribal input.

#### ***a. Identify historic properties (36 CFR 800.4)***

The first step in the 106 process, this is part of the cultural resources report. Results from the initial meetings and/or on-site discussions can be incorporated into the report, and the report sent to them for review and concurrence.

#### ***b. Assess adverse effects (36 CFR 800.5)***

As with the identification step, the opinion of the tribes on the effects of the project can be gained during the on-site discussion/project meeting. Their opinion of effect can then be incorporated into the report, and the report sent to them for review and concurrence.

#### ***c. Resolution of adverse effects (36 CFR 800.6)***

The tribes must be included in the resolution of adverse effects. The consultation to resolve adverse effects between ITD, FHWA, SHPO, the tribes and any other consulting party is accomplished via the Determination of Adverse Effect. A longer discussion than the 1502 (Determination of Eligibility and Effect), this document details the eligible property and the nature of the adverse effect, and seeks ways to avoid or minimize the adverse effect. If avoidance is not possible, it describes the ways in which that effect will be mitigated. Like the cultural resources report, the Determination of Adverse Effect must be sent to the relevant tribes for review and concurrence.

#### ***d. Memorandum of Agreement [36 CFR 800.6(c)]***



In this step, the role of the tribes differs according to the location of the cultural resources. When historic properties are located on Tribal lands, the tribes must be consulted in addition to and on the same basis as SHPO. This gives them the rights of a signatory, and they must be invited to sign the memorandum of agreement. When properties important to a tribe are located off tribal lands, they are a consulting party, and, although they must be consulted at every step of the project, they are not required to sign the memorandum of agreement. They may be invited to sign if the District so wishes.

At each step, the tribes receive 30 days to review and comment. Whether or not tribes choose to respond, the District keeps a record of its attempts to contact the tribes. Copies of letters, phone logs and signed documents (if any) are necessary to establish the “good faith effort” carried out by the District.

### **3. Implementing Laws**

#### **a. National Environmental Policy Act of 1969, 40 CFR 1500**

##### **1501.2 Apply NEPA early in the process:**

**(d)(2):** “The Federal agency consults early with appropriate State and local agencies and Indian tribes...” Since 1969, NEPA has required earliest possible *tribal* notification of projects occurring on reservation land.

##### **1502.16 Environmental consequences:**

**(c):** Environmental impact statements must include a discussion on “Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (*and in the case of a reservation, Indian tribe*) land use plans, policies and controls for the area concerned.”

##### **1503.1 Inviting Comments:**

**(a)** “After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall: **(2)** request the comments of: **(ii)** Indian tribes, when the effects may be on a reservation.”

#### **b. The National Historic Preservation Act 1966 Section 101**

**(d)(2):** “a tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3) of this section, with respect to tribal lands”

...

##### **(d)(6)(A):**

Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

**(d)(6)(B):** In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).

**Section 110(a)(2)(D):** The agency’s preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector;

**c. Native American Graves Protection and Repatriation Act of 1990 (NAGPRA):** establishes consultation requirements (43 CFR 10) that may affect or be affected by consultation pursuant to section 106 of the NHPA concerning activities on Federal and Tribal lands that could affect human remains and cultural items. The Archaeological Resources Protection Act of 1979 and its uniform regulations also require consultation with tribes and provide a formal process of notification (16 U.S.C. 470cc-dd);

#### **d. 36 CFR 800—Protection of Historic Properties:**

**36 CFR 800.2 Participants in the Section 106 process (c)(2)(B): Tribes that have not assumed THPO functions:** When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

**(c)(2)(B)(ii): Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations:** Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or native Hawaiian organization shall be a consulting party.

**(c)(2)(B)(ii)(A):** The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency

official to make a reasonable and good faith effort to identify Indian tribes and native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

**(c)(2)(B)(ii)(D):** When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process.

**36 CFR 800.3 Initiation of the Section 106 process:**

**(d): Consultation on tribal lands:** Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO.

**(f)(2):** Involving Indian tribes and Native Hawaiian organizations: The agency official shall make a reasonable and good faith effort to identify any Indian Tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

**36 CFR 800.4 Identification of historic properties:**

**(f)(4):** Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to Sec 800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites.

**36 CFR 800.5 Assessment of adverse effects:**

**(a):** Apply criteria of Adverse Effect. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

**(c)(2)(ii):** The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

**36 CFR 800.6 Resolution of adverse effects:**

**(a):** Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties

**(c)(2)(ii):** The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

**(3):** Concurrence by others: The agency official may invite all consulting parties to concur in the memorandum of agreement. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

**e. Executive Order #13175 (11/2000)** also calls for "regular and meaningful consultation and collaboration" with Indian tribal governments. (**Exhibit 1800-15**). In cases where a THPO is in authority, all cultural resource review for ITD projects taking place on that THPO's reservation are subject to the THPO's authority: THPO authority will replace that of the Idaho SHPO.

**References**

'General Procedural Guidance for Native American Consultation', BLM 1994. These two federal agencies have long been active in tribal consultation and offer time-tested definitions of 'line officer', 'technical staff', and their functional parallels among tribal staff.

'National Resource Book on American Indian and Alaska Native Relations' USFS 1997

FHWA Idaho Division Office's 1/19/2000 letter—defines the tribal consultation role among transportation entities in Idaho

'Consultation with Indian Tribes in the Section 106 Review Process', ACHP website.

The Advisory Council on Historic Preservation's website: <http://www.achp.gov/> offers bulletins and guides specifically pertaining to consultation issues.

## **SECTION 1850.00 - TRANSPORTATION ENHANCEMENT (TEA) ACTIVITIES**

These projects must undergo the 106 process, however, because most projects advanced as enhancement activities should benefit the preservation of historic properties, their process can be expedited. The National Programmatic Agreement among the Federal Highway Administration (FHWA), National Conference of State Historic Preservation Officers (SHPOs), and the Advisory Council on Historic Preservation (ACHP) for Implementation of Transportation Enhancement Activities (June 11, 1997), the full text of which can be found in [Exhibit 1800-16](#), describes the cultural resource review process applied to transportation enhancement activities. This agreement is intended to reduce the time spent by state transportation agencies in implementing transportation enhancement activities, including historic preservation projects. However, the agreement is not mandatory, and state agencies are authorized to develop their own agreements.

## **SECTION 1860.00 - PERMITS**

- (1) Archaeological Resources Protection Act Permit ([Exhibit 1800-14](#))

This permit is needed for cultural resource survey actions on both federal and tribal lands.

- (2) Historic Resources

No specific permits are required; however, close agency coordination is required on studies, documentation of impacts, possible mitigation, and project construction. (Note: ARPA includes cultural resources).

## **SECTION 1870.00 - NON-ROAD PROJECT REQUIREMENTS**

Rail, airport, or non-motorized transport systems are generally subject to the same policies, procedures, or permits that apply to road systems.

## SECTION 1880.00 - EXHIBITS

### ***Exhibit 1800-1 Glossary of Historic and Archaeological Cultural Resources***

**Adverse Effect** – Occurs when an undertaking alters, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the property’s integrity. [Criteria of Adverse Effect: 36 CFR 800.5(a)1.]

**Advisory Council on Historic Preservation** – An independent federal agency, established under the NHPA, which: (1) advises the President and Congress on matters of historic preservation; (2) carries out Section 106 reviews; and 3) provides technical assistance in historic preservation actions.

**American Indian Religious Freedom Act** – Requires federal agencies and their representatives to consult with native groups (American Indians, Eskimos, Aleuts, and Native Hawaiians) “to protect and preserve Native American religious cultural rights and practices.” [PL 95-341, 1978; 92 Stat. 469.]

**Antiquities Act** – Protects archaeological resources on federal lands, and establishes a permitting system for legal removal of materials. Most provisions have been superseded by the **Archaeological Resources Protection Act**; thus “antiquities” permits have become “ARPA” permits. [Antiquities Act: 16 USC 431, 1906.]

**Archaeological and Historic Preservation Act** – Addresses mitigation for cultural resources to be lost due to federal actions. Most often invoked after decisions for a federal project are reached through the Section 106 process, that is in “late discover” situations whereby the Secretary of the Interior may prescribe mitigation measures without consulting the Advisory Council. The Act also authorizes federal agencies to spend up to 1% on cultural resources work of the total cost of a construction project. [16 USC 469; PL 93-291, 1974.]

**Archaeological Resources Protection Act** – Establishes permitting process for archaeological excavation on federal land. Required “ARPA” permit applicants to demonstrate: (1) qualifications; (2) activity to be done to further archaeological knowledge; (3) curation plan for recovered artifacts. Requires the federal land manager to notify Indian tribes of possible harm to sites having religious or cultural importance. Prohibits unauthorized excavation, removal, or defacement of archaeological resources, and sets civil penalties. [16 USC 470; PL 96-95 1979; Implementing regulations: 43 CFR 3.]

**Area of Potential Effects (APE)** – The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. APE should be defined before historic properties are identified. APE is not defined on the basis of land ownership, and should be determined based upon the potential direct and indirect effects of a project. [36 CFR 800.16 (d).]

**Certified Historic Structure** – A depreciable building or structure which is either listed in the National Register or located in a National Register Historic District, or in a state- or local designated historic district, and certified by the Secretary of the Interior as being of historical significance to (i.e., a contributing element in) the district. [36 CFR 67.2.]

**Certified Local Governments (CLGs)** – Local government historic preservation entities participating in the national historic preservation program, certified by the SHPO. Existence may afford property owners in the CLG jurisdiction the opportunity to participate in local (state, county, etc.) preservation incentives (e.g., tax incentives).

**Certified Rehabilitation** – On a certified **historic property**, work that is certified by the Secretary of the Interior as being consistent with the historic character of the property and, where applicable, with the district in which it is located. [36 CFR 67.2.]

**Contributing Element (or Resource)** – A building, site, structure, or object that adds to the historic architectural qualities, historic associations, or archaeological values for which a property is significant because: (a) it was present during the period of significance, and possesses historic integrity reflecting its character at that time or is capable of yielding important information about the period; or (b) it independently meets the National Register criteria. See National Register Bulletin 16A, p. 16.

**Council (Advisory Council on Historic Preservation)** – An independent federal agency that administers the Section 106 review process.

**Criteria for Evaluation (National Register Eligibility Criteria)** – Standards used for determining the eligibility of properties for inclusion in the National Register of Historic Places. [36 CFR 60.4(a-d)]. See National Register Bulletin 15, section II.

**Cultural Landscape** – Also known as Rural Historic Landscape or Historic Landscape. A geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant

concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features. See National Register Bulletin 30 and C.A. Birnbaum and C.C. Peters, The Secretary of the Interior's Standards for the Treatment of Historic Properties, with Guidelines for the Treatment of Cultural Landscapes, NPS, GPO, Idaho, D.C., 1996.

**Cultural Resource** – A place, object, or event that is important to a community or region's history, traditions, beliefs, customs, or social institutions.

**Cultural Resource Specialist**– A ITD employee in the Environmental Affairs Office who conducts regulatory compliance procedures and advises department staff on policies relating to items of historic/archaeology significance that may be affected by a project.

**Cultural Resources Management** – The body of laws and regulations pertaining to historic, archaeological, and cultural properties, and the manner in which those directives are implemented.

**Data Recovery Plan** – A plan developed in consultation with the SHPO and interested parties for conducting research, gathering information, and documenting an historic property that will be adversely affected by an ITD project.

**De minimis Section 4(f) Impact** - The *de minimis* impact criteria and associated determination requirements specified in Section 6009(a) of SAFETEA-LU are different for historic sites than for parks, recreation areas, and wildlife and waterfowl refuges. *De minimis* impacts related to historic sites are defined as the determination of either “no adverse effect” or “no historic properties affected” in compliance with Section 106 of the National Historic Preservation Act (NHPA). *De minimis* impacts on publicly owned parks, recreation areas, and wildlife and waterfowl refuges are defined as those that do not “adversely affect the activities, features and attributes” of the Section 4(f) resource.

**Department of Transportation Act – Section 4(f)** A Federal regulation stating that FHWA may not approve the use of land from a significant publicly owned public park, recreation area or wildlife and waterfowl refuge, or any significant historic or prehistoric site unless it is determined that there is no prudent and feasible alternative and the action includes all possible planning to minimize harm. [49 USC 303, 1966, recodified 1983.]

**Designed Historic Landscape** – A landscape that has significance as a design or work of art; that was consciously designed and laid out to a design principle or recognized style or tradition; that has an historical association with a significant person, trend, or event in landscape architecture; or that has a significant relationship to the theory or practice of landscape architecture. See National Register Bulletin 18.

**Determination of Adverse Effect** – A finding, by a federal agency in consultation with SHPO, pursuant to compliance with **Section 106**, that a proposed undertaking will have an effect on historic properties. If an effect is identified, the **Criteria of Adverse Effect** is applied to determine potential adverse effects. Other possibilities are determinations of No Effects and No Adverse Effect.

**Determination of Eligibility** – Formal recognition (by the SHPO, state Advisory Council, the Keeper of the National Register, or an agency) of a property's eligibility for inclusion, but not actual listing, in the National Register of Historic Places.

**District** – A significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. May be an archaeological or historic district, or may contain elements of both.

**Easement (Preservation Easement)** – An agreement between a private property owner and a public body obligating the owner and future owners to preserve historic features of the property. The owner surrenders opportunities for development potential at “fair market value” for income, estate, and gift tax benefits of equal value.

**Economic Recovery Tax Act of 1981 (ERTA)** – Establishes the Investment Tax Credit (ITC) program for rehabilitation of older buildings, including certified historic buildings (see definition). [PL 97-34] Amended by the **Tax Reform Act of 1986**.

**Effect**– Occurs when an undertaking may alter characteristics that qualify a property for inclusion in the National Register. [Criteria of Effect: 36 CFR 800.5(a)1.]

**Eligible** – A property is eligible for inclusion in the National Register of Historic Places if it meets the National Register Criteria (see How to Apply the National Register Criteria for Evaluation, NR Bulletin 15).

**Environmental Impact Statement (EIS)** – Required by **NEPA**, to include identification of known cultural resources in a federal or Idaho State project area and disclosure of potential impacts.

**Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** – Requires federal agencies to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Section 6-606 requires consultation with federally recognized tribes to “coordinate steps” to pursue compliance with this executive order. [42 USC 4321.]

**Executive Order 13006** – Requires federal government to “utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in our central business areas ... when locating Federal facilities, Federal agencies shall give first consideration to historic properties within historic districts.... Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties.” (1996)

**Executive Order 13007** – Requires federal agencies, “to the extent practicable, [to] (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.” (1996)

**FONSI** – Finding of No Significant Impact.

**Historic American Building Survey (HABS) and Historic American Engineering Record (HAER)** – The historical architectural and engineering programs of the National Park Service that promote preservation through documentation of significant structures. HABS/HAER documentation can be sponsored by NPA, individuals, or organizations, but often is completed by agencies pursuant to Sections 106 or 110(b) of the National Historic Preservation Act. Those HABS/HAER mitigation projects record properties to be demolished or substantially altered as a result of agency action or assisted action.

**Historic Context** – A body of information about historic properties organized by theme, place, and time. It is the organization of information about prehistory and history according to the states of development occurring at various times and places. See NR Bulletin 15 section V.

**Historic Preservation** – Identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction, or any combination of the foregoing activities relating to historic properties. [16 USC 470w(8)]

**Historic Property** – A property or cultural resource that is listed in or eligible for listing in the National Register or in state and local historic registers. Historic properties may be buildings or other structures, objects, sites, districts, archaeological resources, landscapes or traditional cultural properties.

**Integrity** – The authenticity if a property’s historic identity, evidenced by the survival of physical characteristics that existed during the property’s historic or prehistoric period. Historic integrity is the composite of seven qualities: location, design, setting, materials, workmanship, feeling and association. (See National Register Bulletin 15, Section VIII).

**Investment Tax Credit (ITC)** – Credit granted by the federal government against tax liability for the certified rehabilitation of buildings for income-producing purposes. Made available by the **Economic Recovery Tax Act of 1981**.

**ISTEA (Intermodal Surface Transportation Efficiency Act of 1991)** – A national act that provides funding for historic bridge preservation and rehabilitation projects and provides for more flexible design standards in order to preserve historic structures.

**Keeper of the National Register** – Maintains the **National Register of Historic Places**, and makes final decisions on listing of properties nominated to the National Register.

**Management Plan** – Typically addresses appropriate treatments and preservation strategies for managing historic properties. Often included as an item in a Programmatic Agreement.

**Memorandum of Agreement (MOA)** – A formalization of the means of resolving adverse effects agreed upon by the consulting parties, serving to specify mitigation, identify responsibility, render Advisory Council comment, and acknowledge effects of the undertaking on historic properties. May also be a Programmatic Agreement (PA).

**Mitigation Measures** – Actions required to mitigate the adverse effects of a project on historic properties. Usually stipulated in an MOA/PA.

**Multiple Property Nomination** – A registration of several significant properties linked by a common property type or historic context. Submitted to SHPO and NPS on National Register Multiple Property Documentation Forms (NPS 10-900-b), known as “MPDs.” See National Register Bulletin 16B.



**National Environmental Policy Act (NEPA)** – Creates a national policy for environmental protection to include the cultural environment. Requires federal agencies sponsoring projects to identify cultural resources and disclose potential impacts in Environmental Assessments (EA) or Environmental Impact Statements (EIS). Requires that all federal laws and regulations “be interpreted and administered in accordance with the policies set forth in this chapter; triggers Section 106 compliance.” [PL 91-190, 42 USC 4321-4347, 1969.]

**National Historic Landmark** – Historic properties of national significance, established by the Historic Sites Act of 1935 [PL 74-292]. NHLs are also listed in the National Register. [National Historic Landmark Program, 36 CFR 65.]

**National Historic Preservation Act (NHPA)** – Establishes a national policy for historic preservation, the National Register of Historic Places, SHPOs, the Advisory Council on Historic Preservation, CLGs, and other programs. Contains Sections 106 and 110 (see definitions). [16 USC 470, PL 89-655, 1966, amended 1976, 1980, 1992.]

**National Register of Historic Places** – The nation’s official listing of properties significant in national, state and/or local history, meeting one or more criteria for evaluation (36 CFR 60.4). Listing is commemorative, but may require compliance by property owners with federal/state/local laws and regulations. May also provide private property owners with opportunities to take advantage of preservation incentives, such as easements and tax relief.

**Native American Graves Protection and Repatriation Act (NAGPRA)** – Provides American Indians, Native Hawaiians, and Native Alaskans a formal role in activities occurring on federal and tribal lands that may affect archaeological resources. Mitigation actions developed pursuant to Section 106 of the NHPA, and the disposition of human remains, must meet with the approval of appropriate tribal authorities. Inadvertent discovery of human remains and other cultural materials requires immediate “reasonable” protection of the items and a 30-day suspension of project-related activities. NAGPRA also sets forth a process for repatriation of human remains, and: funerary and sacred objects, and items of “cultural patrimony” and provides penalties for illegally trafficking in same. [PL 101-601; 104 Stat. 3048.]

**Nomination** – Official request to have a property listed in the National Register. Documentation is placed on a National Register of Historic Places Registration Form (NPS 10-900) and submitted to the CLG (if appropriate), the SHPO, and the Keeper of the National Register.

**Non-contributing Element**– A building, site, structure, or object that does not add to the historic architectural qualities, historic associations or archaeological values for which a property is significant because: (a) it was not present during the period of significance; (b) due to alterations, disturbances, additions, or other changes, it no longer possesses historic integrity reflecting its character at that time or is incapable of yielding important information about the period, or (c) it does not independently meet the National Register criteria. (See National Register Bulletin 16A, Part III).

**Not Eligible** – A property is not eligible for inclusion in the National Register of Historic Places if it does not meet the National Register Criteria (see How to Apply the National Register Criteria for Evaluation, NR Bulletin 15).

**Object** – A construction primarily artistic in nature or relatively small in scale.

**Patent** – Legal title to real property. Granted by the federal government for parcels of the public domain when alienation occurs as the result of homesteading or similar action.

**Preservation** – the act or process of applying measures necessary to sustain the existing form, integrity and materials of a historic property.

**Programmatic Agreement (PA)** – An agreement typically developed for a large or complex project or types of undertakings that would otherwise require a number of individual actions under Section 106, especially when effects on historic properties are repetitive or multi-state or national in scope; or when effects cannot be fully determined prior to project approval; or when effects consist of routine maintenance of historic properties. Management Plans are often stipulated in Pas. [36 CFR 800.13(a).]

**Property Type** – Historic properties sharing physical or associative characteristics.

**Protection of Historic and Cultural Properties (36 CFR 800)** – Federal regulations implementing Section 106 of the National Historic Preservation Act.

**Reconstruction** – The process of depicting, by means of new construction, the form, features and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

**Registration Requirements** – Attributes of significance and integrity qualifying a property for listing in the National Register; especially important in establishing eligibility for each property type in Multiple Property submissions.

**Rehabilitation** – The process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values. [36 CFR 67.2]

**Request for Proposal (RFP)** – Issued by agencies soliciting contracted cultural resource studies.

**Restoration** – The act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

**Rural Historic Landscape** – A geographic area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.

**Secretary of the Interior's Standards (for Preservation, Rehabilitation, Restoration or Reconstruction)** – Sets of general rules outlining the appropriate methods to use on historic properties under each level of treatment.

**Section 4(f)** – Requirement in the Department of Transportation Act of 1966 that federally-funded highway projects may use publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge, or land of an historic site only if: no prudent and feasible alternatives exist and the project includes all possible planning to minimize harm. [Also appeared in the Federal-Aid Highway Act of 1968; recodified in 49 USC 303, 1983.] See EPM, [Section 1700](#).

**Section 106 Review** – Section 106 of the Advisory Council's regulations (36 CFR Part 800), which implements the National Historic Preservation Act of 1966, as amended. This is the federal review process that ensures that historic properties are considered during federal aid project planning and execution. Section 106 applies to historic properties that are listed and those that have not yet been listed or formally determined to be eligible for listing; even properties that have not yet been discovered (such as archaeological sites) are subject to Section 106 review.

**Section 110** – Section in the National Historic Preservation Act of 1966 assigning broad responsibilities to federal agencies to designate an agency preservation officer, locate and nominate properties to the National Register, record historic properties that must be altered or destroyed and undertake preservation as well as other responsibilities. [16 USC 470h-2.]

**Section 304** – Section of the National Historic Preservation Act of 1966, as amended in 1992, directing federal agencies or other public officials receiving federal grant assistance to withhold from disclosure to the public, information regarding the location, character, or ownership of an historic resource if that disclosure may: (1) cause invasion of privacy; (2) risk harm to the resource; or (3) impede the use of a traditional religious site by practitioners. Section 304 serves as an exemption from disclosure requirements of the Freedom of Information Act.

**Section 404 Permit** – Requirement of the Clean Water Act of 1977, as amended, for modification of wetlands, and for dredging and filling of navigable waterways. [33 USC 1344.] Requires compliance with Section 106 of the National Historic Preservation Act.

**Setting** – Quality of integrity applying to the physical environment of an historic property.

**Site** – The location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archaeological value regardless of the value of any existing structure.

**State Historic Preservation Officer (SHPO)** – Coordinates preservation activities in each state; one SHPO per state is appointed, usually by the governor. SHPO is charged with reflecting the interests of the state and its citizens in preserving their cultural heritage, which involves a variety of responsibilities. [36 CFR 61.4(b).] In Idaho State, SHPO is housed in the Office of Archaeology and Historic Preservation (ISHS).

**Structure** – Functional constructions made usually for purposes other than creating shelter.

**STURAA (Surface Transportation and Uniform Relocation Assistance Act of 1987)** – A national act that mandates states to give special consideration to rehabilitating, reusing, and preserving historic bridges.

**Tax Reform Act (TRA) of 1986** – Amended the Economic Recovery Tax Act of 1981 (see definition) reducing: (1) to 20% of the ITC (see definition) allowable for rehabilitation costs for certified historic structures (see definition); and (2) to 10% of the ITC allowable for buildings first placed in service before 1936. [PL 99-514.]

**TEA 21** – Transportation Equity Act for the 21<sup>st</sup> Century (PL 105-178), continues national transportation policy directions established by ISTEA. (1998)

**Traditional Cultural Property** – A place eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are (a) rooted in that community's history, and (b) important in maintaining the continuing cultural identity of the community. The concept is based upon the introductory section of the National Historic Preservation Act, which states "the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people." [16 USC 470(b)(2)] See National Register Bulletin 38. Authorized by the 1992 Amendments to the National Historic Preservation Act. [Section 101(d)(6)(A).]

**Tribal Historic Preservation Officer (THPO)** – Authorized by the 1992 Amendments to the national Historic Preservation Act. When approved by NPS, Tribal HPO replaces SHPO in compliance process on "tribal" lands. [Section 101(d)(2).]

**Undertaking** – Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. [36 CFR 800.16]

**Universal Transverse Mercator (UTM) Grid System** – Method for locating historic properties using USGS maps and measurements cited in linear, decimal units. Measurements are referred to as "UTMs."

**Use** – A 4(f) term that occurs when land is permanently incorporated into a transportation facility, when there is a temporary occupancy of land that is adverse or when there is a constructive use of land.

### ***Exhibit 1800-2 Section 106 Regulations: Users Guide to the National Register Evaluation Criteria***

The following criteria are established by the Advisory Council on Historic Preservation.

#### **National Register Criteria for Evaluating Properties**

The criteria applied to evaluate properties (other than areas of the National Park System and National Historic Landmarks) for the National Register are listed below. These criteria are worded in a manner to provide for a wide diversity of resources. The following criteria shall be used in evaluating properties for nomination to the National Register, by the National Park Service (NPS) in reviewing nominations, and for evaluating National Register eligibility of properties.

Guidance in applying the criteria is further discussed in the "How To" publications, Standards & Guidelines sheets, and Keeper's opinions of the National Register. Such materials are available upon request from National Register of Historic Places Publications, National Park Service, P.O. Box 37127, Washington, D.C., 20013-7127 (phone: 202-343-5726).

#### **Criteria for Evaluation**

The quality of significance in American history, architecture, archaeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and that

- (a) are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) are associated with the lives of persons significant in our past; or
- (c) embody distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) have yielded, or may be likely to yield, information important in prehistory or history.

#### **Criteria Considerations**

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (a) a religious property deriving primary significance from architectural or artistic distinction or historical importance; or
- (b) a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or
- (c) a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.
- (d) a cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

- (f) a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- (g) a property achieving significance within the past 50 years if it is of exceptional importance. [This exception is described further in NPS's "How To" booklet No. 2, entitled "How to Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years," available from NPS.]

### **Exhibit 1800-3 ITD Cultural Resources Report Checklist**

#### **ITD Archaeological and Historic Survey 106 Report Checklist**

The following is information that District Environmental Planners can check for accuracy and completeness prior to submitting consultant 106 reports to Headquarters Cultural Resources for review and evaluation prior to submittal to SHPO.

##### **A. Project Name and Statement of Objectives:**

Are the project name, project number, and key number correct per ITD "Project Tracking" System?  
If a source, what is the source # and/or project number, key number and project name?

##### **B. Name and Full Description of the Proposed Undertaking (see map):**

Is the project description succinctly complete and accurate? Are all project actions included?

##### **C. Location and General Environmental Setting (see map):**

Is the name of the USGS 7.5' Quad (with year) map correct?

Is the name of the county/counties correct? Are they all included?

Are the Township, Range and Section numbers correct, including ¼, ¼, ¼ sections? This ¼ section breakdown is essential for source, waste and staging submissions.

Does the total acreage surveyed appear accurate?

Are project area maps attached?

A Vicinity Map showing the project in relation to the rest of the State or in terms of an identifiable reference point

A Project Map defining the immediate project area. Transects, previously recorded and newly recorded sites can be included here if they remain clearly identifiable. Otherwise they will require an independent Site Map.

Are project and site maps well marked, accurate and easy to read? Do they rely on color to define routes, boundaries, alternates, etc? If so, SHPO does not accept them. They must be readable in black-and-white after the requisite photocopies are made.

Are site specific maps or Preliminary Design sheets attached? These are required to define each consultant-recommended National Register-eligible site and its boundaries in relation to current and proposed project areas. They are not required for segments of a project that do not involve National Register eligible properties. These maps must include eight items.

Current edge of oil/toe of slope

Proposed edge of oil/toe of slope

Current ROW

Proposed ROW

Cultural resources with buildings numbered, landscape features defined and boundaries delineated

Measurements from ROW/edge of oil/toe of slope and cultural resources

North arrow

Key

##### **D. Pre-Field Research:**

Are all sites from the listed 'previous studies,' which are recorded at SHPO and said to be within .5 miles from the project, charted in the report and placed on an attached map? Is the map clearly readable? Are the chart and the map easily cross referenced?

##### **E. Field Methods:**

Does the area the consultants covered—as indicated on their Project Map—conform to the District's definition of the project area?

Does it include all properties within the APE?

##### **F. Results**

Are all the Field#s/Site#s on the map?

Does each 'CR noted but not recorded' have at least one photo in which you can see the feature clearly? If there is a question, the consultant will be asked to go out and get a better photo that tells a clear story.

Are Noted But Not Recorded properties identified on a map and with at least one photograph?

##### **G. Conclusions and Recommendations:**

Is every site/feature identified in the report now listed here in the summary chart?

Are the consultant's site recommendations included? Each consultant must offer a NR eligibility recommendation and determination of effect on each resource, based on the field work. SHPO and ITD may or may not agree but the consultant's recommendation is valued and essential.

## **H. Certification of Results**

Is the report signed and dated?

## **I. Site Recordation attachments to the AHSR—Idaho Historic Sites Inventory (IHSI) and Archaeological Survey of Idaho (ASI)**

Is there an IHSI/ASI for every cultural resource in the project area?

Are site maps and photos of each resource attached to the pertinent form?

Do these site maps indicate all items requested under point C?

## Exhibit 1800-4: Archaeological & Historic Survey Report (AHSR)

### ARCHAEOLOGICAL AND HISTORIC SURVEY REPORT

#### Idaho Archaeological Survey

A. Project Name and Statement of Objectives:

B. Name and Full Description of the Proposed Undertaking (Map \_):

Location and General Environmental Setting (Map \_):

County:

Township, Range, Section:

USGS Topographic Map:

D. Pre-Field Research:

1. Sources of information checked: ☐ Site Location Directory ☐ Site Sensitivity Maps  
☐ Other ☐ National Register

2. Summary of previous studies in this area (.5 mi) (Map \_)

Rpt#	Author	Date	Title	Results	Proximity to APE
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E. Expected Historic and Prehistoric Land Use and Site Sensitivity:

1. Are there recorded historic and archaeological sites known in this area (.5 mi)? List:  
☐ Yes ☐ No

2. Are sites expected? ☐ Yes (Where? What kinds?) ☐ No (Why?)

F. Field Methods:

1. Areas examined and type of coverage. (Transects, level of examination. Key to map):

2. Surface & subsurface visibility (% of land not obscured):

3. Acres surveyed: Reconnaissance: ☐ Intensive: ☐

4. Areas not examined and reasons why:

5. Personnel conducting/assisting in survey:

6. Date(s) of survey:

7. Problems encountered: .

G. Results:

1. All cultural resources recorded and pre-recorded in/abutting project area (Map \_).

Field# / Site#	Type of Site	Artifact/Feature	NR Eligibility	Effect
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2. Cultural resources noted but not formally recorded: List features that are clearly not National Register eligible. Contemporary properties/features are not recorded but may merit noting, thus a photo is requested. List these properties. Include date of construction, one photograph, and why not recorded.

Field# ,if given	Description (attach photo	Reason Not Recorded
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H. Conclusions and Recommendations: Summarize findings, impacts; recommendations for data re-covery; monitoring during construction; avoidance, etc for all cultural resources in project area. Use chart::

Field#/Site#	Name/Type Site	N.R. Recommendation	Effect	Proximity to APE
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I. Attachments:

1. IMACS, IHSI site form attached for each site? ☐ Yes



2. Maps attached? (Prelim Design, USGS, Proj Area, Sketch, Etc) ☐ Yes  
3. Other attachments? (Bridge plans, photos, etc) photos ☐ Yes

J. Repository: *Hwy Archaeologist, Id Transportation Dept - Environmental Section, Boise ID 83707; Id State Historic Preservation Office, 210 Main St, Boise ID 83721*

K. Certification of Results:

I certify that I conducted the investigation reported here, that my observations and methods are fully documented, and that this report is complete and accurate to the best of my knowledge.

\_\_\_\_\_  
Signature of Reporter

\_\_\_\_\_  
Date

***Exhibit 1800-5 Archaeological Survey of Idaho (AIS)***



ASI.pdf (165 KB)

***Exhibit 1800-6 Idaho Historic Sites Inventory  
(IHSI)***

## IDAHO HISTORIC SITES INVENTORY FORM

PROPERTY NAME		FIELD#	
STREET			
CITY	VICINITY <input type="checkbox"/>	COUNTY CD	COUNTY NAME
SUBNAME	BLOCK	SUBLOT	ACRES <input type="checkbox"/> LESS THAN <input type="checkbox"/>
TAX PARCEL	UTMZ <input type="checkbox"/>	EASTING	NORTHING
TOWNSHIP	N_S <input type="checkbox"/>	RANGE	E_W <input type="checkbox"/> SECTION <input type="checkbox"/> 1/4 <input type="checkbox"/> 1/4
QUADRANGLE	OTHERMAP		
SANBORN MAP	SANBORN MAP#	PHOTO#	
PROPERTY TYPE	CONST/ACT1	ACTDATE1	CIRCA1 <input type="checkbox"/>
	CONST/ACT2	ACTDATE2	CIRCA2 <input type="checkbox"/>
ASSOCIATED FEATURES			TOTAL # FEATURES
ORIGINAL USE	WALL MATERIAL		
ORIGSUBUSE	FOUND. MATERIAL		
CURRENT USE	ROOF MATERIAL		
CURSUBUSE	OTHER MATERIAL		
ARCHSTYLE	PLAN	CONDITION	
NR REF #	NPS CERT	ACTIONDATE	FUTURE ELIG DATE
DIST/MPLNAME1	DIST/MPLNAME2		
Individually Eligible <input type="checkbox"/>	Contributing in a potential district <input type="checkbox"/>	Noncontributing <input type="checkbox"/>	Future eligibility <input type="checkbox"/>
Not Eligible <input type="checkbox"/>	Multiple Property Study <input type="checkbox"/>	Not evaluated <input type="checkbox"/>	
CRITERIA A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/>	CRITERIA CONSIDERATION A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/>		
AREA OF SIGNIF	AREA OF SIGNIF		
COMMENTS			
PROJ/RPT TITLE		SVY DATE	SVY LEVEL
RECORDED BY	PH	ADDRESS	
SUBMITTED PHOTOS <input type="checkbox"/> NEGS <input type="checkbox"/> SLIDES <input type="checkbox"/> SKETCH MAP <input type="checkbox"/>			
SVY RPT #	***** FOR ISHPO USE ONLY *****		IHSI#
MS RPT #			SITS#
IHPR #	HABS NO. ID-	HAER NO. ID-	REV#
CS #	IHSI# REF	NR REF# 2	REV# REF
SVY RPT# 1	SVY RPT# 2	SVY RPT# 3	MS RPT# 1 MS RPT# 2
ADD'L NOTES			
ATTACH <input type="checkbox"/>			
MOREDATA <input type="checkbox"/>			
# OF PHOTOS	NEGBOX#	# OF SLIDES	SHPO DETER DETER DATE
INITIALED	ENTRY DATE	REVISE1	REVISE2 REVISE3

IHSI#  
SITS#  
REV#

ITD-1502 4-98 W

**EXHIBIT 1800-7 Idaho Transportation Department/State Historic Preservation Office**

**DETERMINATION OF SIGNIFICANCE AND EFFECT**

Title						No.			
						tes			
ANCE AUTHORIZED WITHOUT SURVEY						ER __ Other __			
ation of Eligibility		ibers		ts					
Sites									
Eligible									
ntially Eligible									
ble									
ation of Effect									
<p>tes:</p> <p>e will be no effect to the following site because:</p> <p>ē:</p> <p>de the project area:</p> <p>de impact zone:</p> <p>project plans will avoid:</p> <p>haracter will not be changed:</p> <p>will be affected as indicated:</p> <p>ct will be monitored during construction due to the potential for cultural resources:</p> <p>_____</p> <p>/ Archaeologist</p>									
omment: I have reviewed the documentation and recommendations provided by ITD.									
<p><input type="checkbox"/> ith the above determination of eligibility and effect and with the conditions of compliance.</p> <p><input type="checkbox"/> ith the above determinations of eligibility and effect given stipulations explained below or in the attached letter.</p> <p><input type="checkbox"/> e with the above determinations of eligibility and effect as explained below or in the attached letter.</p> <p>_____</p> <p>storic Preservation Officer</p>									



**DETERMINATION OF ADVERSE EFFECT**

[Historic Bridge or Historic Site Name]

ITD Project Name XXXXXXXX

ITD Project # XXXXXXXX, Key # XXXXXXXX

[County], Idaho

This documentation is prepared in accordance with the Advisory Council on Historic Preservation regulations, Section 800.11(e), which stipulates the inclusion of the following items:

- 1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects (APE), including photographs, maps and drawings, as necessary.**

*(Project description can be taken from the Section 106 document if sufficient. Include a detailed description of Preferred Alternative. Use AASHTO standards in discussing current conditions vs. proposed improvements. Must state the Federal involvement and identify the APE that was used for the Section 106 investigations. This section should be approximately 2-3 paragraphs).*

- 2. A description of the steps taken to identify historic properties.**

*(Identification description can be used from the Section 106 document if sufficient. This can be found in the METHODS section of the report. Please discuss all sites (i.e. "A total of 10 sites were identified during the investigation. Nine of these sites were determined Not Eligible for the NRHP. One site was determined NRHP Eligible. The State Historic Preservation Office (SHPO) concurred with these eligibility determinations in May 2006 (Attachment B)."). This section should be between 1 and 2 paragraphs).*

- 3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register.**

*(Description of affected properties can be taken from the Section 106 document if sufficient. Must include information regarding the characteristics that qualify the property for inclusion on the NRHP (i.e. Criteria A, B, C, or D). This section should be between 1 and 2 paragraphs).*

**4. A description of the undertaking's effects on historic properties.**

*(Provide a description of how the property will be impacted. This information can be taken from the Section 106 document if sufficient. This section should be approximately 1 paragraph).*

**5. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize, or mitigate adverse effects.**

In accordance with Section 800.5 of the Advisory Council regulations, FHWA and ITD have applied the criteria of adverse effect, determining that the project will have an adverse effect on Site # XXXXXXXX because it will result in XXXXXXXX (i.e. the total destruction of the archaeological remains).

*(Provide a description of why the criteria of adverse effect were found applicable. In addition, include mitigation measures. This information can be from the Section 106 document if sufficient. This section should be between 1 and 2 paragraphs).*

**6. Copies or summaries of any views provided by consulting parties and the public.**

*(Provide a description of the consultation that has taken place throughout the Section 106 process with the public, all public agencies, tribes, and special interest groups. This information can be taken from the Section 106 document if sufficient. This section should be approximately 1 paragraph).*

**Exhibit 1800-9 SAMPLE MEMORANDUM OF AGREEMENT**

MEMORANDUM OF AGREEMENT  
SUBMITTED TO THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE  
(*HISTORIC PROPERTY*)  
ITD PROJECT NAME  
ITD PROJECT #, KEY #  
COUNTY, IDAHO

WHEREAS, the Idaho Transportation Department (ITD) proposes to (*undertaking*) to the (*Historic Property, IHSI #*);

WHEREAS, the (*Historic Property*) is eligible for the National Register of Historic Places and its (*undertaking*) constitutes an adverse effect;

WHEREAS the Idaho State Historic Preservation Officer (SHPO) has been consulted pursuant to 36 CFR 800 regulations implementing the National Historic Preservation Act (16 USC 470f) and has reviewed the proposed undertaking to consider feasible and prudent alternatives and means to minimize or satisfactorily mitigate the adverse effect;

NOW, THEREFORE, the FHWA, the ITD, the Idaho SHPO, and (*list each Interested Party/Signatory*) agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

**STIPULATIONS**

1. Treatment (*Treatments specific to the relevant project are detailed here. For example*):

Prior to removal of the (*Historic Property*), the ITD will complete documentation to an appropriate level, to be established by the SHPO. Documentation (photos, etc.) shall be submitted to SHPO for approval and acceptance prior to (*list appropriate undertaking: dismantling, removing, excavating, etc.*) the (*Historic Property*). Copies of this documentation shall be made available to the SHPO and appropriate local archives designated by the SHPO, as well as the national archives stipulated by the NPS.

2. Amendment

If a signatory determines the terms of the MOA cannot be met or that a change is necessary to meet the requirements of the law, that signatory will immediately request that the consulting parties consider an amendment or addendum. Any necessary amendment or addendum will be executed as defined in the 36 CFR 800 regulations.

3. Dispute Resolution

If a dispute arises regarding implementation of the MOA, FHWA will consult with the objecting party to resolve the dispute. If the dispute cannot be resolved, comments will be requested from the Council, as defined in 36 CFR 800.

4. Termination

If any signatory determines that the terms of this memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories or request the comments of the Council.

5. Effective Period

This MOA shall be effective upon its execution by the last signatory and shall remain in effect, unless terminated, suspended, or amended, for a period of four years.

Execution of this MOA by the FHWA, the ITD, the Idaho SHPO, and (*list each Invited Signatories/Concurring Parties*) the submission of documentation and filing of this MOA with the Council pursuant to 36 CFR Section 800.6(b) (1) (iv) prior to FHWA's approval of this undertaking, and implementation of its terms evidence that FHWA taken into account the effects of the undertaking on this historic property and afforded the Council an opportunity to comment.

IDAHO STATE HISTORIC PRESERVATION OFFICER

BY: \_\_\_\_\_  
(Name/Title) (Date)

(Add a signature line for each INTERESTED PARTY/SIGNATORY):

BY: \_\_\_\_\_  
(Name/Title) (Date)

IDAHO TRANSPORTATION DEPARTMENT

BY: \_\_\_\_\_  
(Name/Title) (Date)

FEDERAL HIGHWAY ADMINISTRATION

BY: \_\_\_\_\_  
(Name/Title)

\_\_\_\_\_  
(Date)

## **Exhibit 1800-10 Section 4(f) Template**

### **4(F) EVALUATION**

#### **SECTION 4(F) EVALUATION AND APPROVAL FOR FEDERALLY-AIDED PROJECTS THAT NECESSITATE USE OF LAND FROM PROTECTED RESOURCES**

RESOURCE NAME

PROJECT NAME

PROJECT #, KEY #

COUNTY, IDAHO

Introduction

*Present an overview of:*

*Project*

*Resource*

*Preferred Alternative*

*Mitigation for the use of the Resource*

Description of Project

*In-depth, detailed description of each Alternative under consideration*

*In-depth, detailed description of each Alternative in relation to the Resource.*

Purpose and Need of Project

*In-depth, detailed description for why project is necessary and what it will achieve (use AASHTO standards in discussing current conditions vs. proposed improvements)*

Description of 4(f) Resource

*In-depth, detailed discussion of the Resource:*

*History (why located here, when, by whom; importance to region)*

*Architectural/Structural description (include old photos; construction plans; repair& alteration history; move from another location)*

*National Register qualifications*

*Current condition*

Alternatives

*List all alternatives that avoid any use of the resource:*

Do Nothing

2. (Avoidance option)

3. (Avoidance option)

Findings

*Describe alternatives listed above, explaining why they are or are not prudent and/or feasible. Use AASHTO standards in discussing avoidance alternatives vs. preferred alternative.*

Do Nothing:

The Do Nothing Alternative has been studied. The Do Nothing Alternative ignores the basic transportation needs. For the following reasons, this alternative is not feasible and prudent. *Discuss all alternatives, providing detail supporting any or all relevant points:*

*a-f*

Existing transportation, safety or maintenance problems remain

Capacity deficiencies

Substantial, unusual or unique adverse community and/or environmental impacts:

Substantial, unusual or unique increased roadway and/or structure costs:

Unique or unusual engineering, traffic, maintenance and/or safety problems:

Project will not meet identified transportation needs

Mitigation

All measures to minimize harm: The proposed action includes all possible planning to minimize harm and to preserve the historic integrity of the site. *Detail all measures taken to minimize harm to Resource.*

Coordination/Consultation

*Identify all public, agency, tribal, special interest groups consulted and results of consultation*

## Conclusion

*Provide brief wrap-up of 'Findings' above:*

1. Do Nothing Finding

Attachments: *Include all that are useful to 4(f) documentation*

Black-and-white photos of resource (old [if available] and current)

Historic documents *pertinent* to resource (blueprints, ownership, use, etc)

Vicinity map; Site map

D. Plans of Alternatives

## **Exhibit 1800-11 Programmatic 4(f) Template: Bridges**

### PROGRAMMATIC 4(F) EVALUATION

#### PROGRAMMATIC SECTION 4(F) EVALUATION AND APPROVAL FOR FEDERALLY-AIDED PROJECTS THAT NECESSITATE THE USE OF HISTORIC BRIDGES

BRIDGE NAME  
PROJECT NAME  
PROJECT #, KEY #  
COUNTY, IDAHO

##### Introduction

*Present a brief overview of:*

*Project*

*Bridge*

*Preferred Alternative*

*Mitigation for the use of the Historic Bridge*

##### Applicability

The programmatic Section 4(f) evaluation may be applied to this project because it meets the following criteria:

The bridge is to be replaced with federal funds.

The project will require the use of a historic bridge structure that is eligible for listing on the National Register of Historic Places.

The bridge is not a National Historic Landmark.

##### Description of Project

*In-depth, detailed description of each Alternative under consideration*

*In-depth, detailed description of each Alternative in relation to the Historic Bridge*

##### Purpose and Need of Project

*In-depth, detailed description for why project is necessary and what it will achieve. Use AASHTO standards in discussing current conditions vs. proposed improvements.*

##### Description of 4(f) Historic Bridge

*In-depth, detailed description of the Historic Bridge:*

*History (why located here, when, built by whom; importance to region)*

*Architectural/Structural description (include old photos; construction plans; repair & alteration history; move from another location)*

*National Register qualifications*

*Current condition*

##### Alternatives

The following alternatives avoid any use of the Historic Bridge.

1. Do nothing.
2. Rehabilitate the Historic Bridge without affecting the historic integrity of the structure, as determined by procedures implementing the NHPA.
3. Build a new structure at a new location without affecting the historic integrity of the (old) Historic Bridge, as determined by procedures implementing the National Historic Preservation Act (NHPA).

##### Findings

1. Do Nothing:

The Do Nothing Alternative has been studied. The Do Nothing Alternative ignores the basic transportation needs. For the following reasons, this alternative is not feasible and prudent: *Provide detail supporting any or all relevant points: a, b. Use AASHTO standards in discussing avoidance alternatives vs. preferred alternative.*

- a. Maintenance
- b. Safety

2. Rehabilitation without affecting the historic integrity of the Historic Bridge



Rehabilitation measures have been examined, however, for the following reasons this Alternative is not feasible and prudent: *Provide detail supporting any or both relevant points: a, b. Use AASHTO standards in discussing avoidance alternatives vs. preferred alternative.*

- a. Structural deficiency
- b. Geometrical deficiency

3. Build Alternative(s) on a new location without using the Section 4(f) Historic Bridge:

Investigations have been conducted to construct a bridge on a new location or parallel to the (old) Historic Bridge, however, for the following reasons each Alternative is not feasible and prudent: *List each Alternative, addressing any or all relevant points, a-d, for each. Use AASHTO standards in discussing avoidance alternatives vs. preferred alternative.*

- a. Terrain
- b. Adverse social, economic and/or environmental effects
- c. Topography, engineering and/or economy
- d. Preservation of existing Historic Bridge

## Mitigation

Measures to minimize harm:

The existing Historic Bridge, or portions thereof, will be made available for an alternate use, provided a responsible party agrees to maintain and preserve the bridge;

Before removal or demolition, the existing Historic Bridge will be subjected to documentation of a level to be determined in consultation with SHPO.

## Coordination/Consultation

*Identify all public, agency, tribal and special interest groups consulted and results of consultation*

## Conclusion

*Provide brief wrap-up of 'Findings'*

1. Do Nothing Finding
2. Finding 2
3. Finding 3 (each Alternative)
4. Mitigation

## Attachments:

A. Black-and-white photos of existing Historic Bridge (old [if available] and current)

B. Vicinity map; Site map

C. Plans of existing Historic Bridge

Plans of proposed bridge, approach alterations and vicinity

## **Exhibit 1800-12 Programmatic 4(F) Template: Historic Sites**

### **PROGRAMMATIC SECTION 4(F) EVALUATION AND APPROVAL FOR FEDERALLY-AIDED PROJECTS THAT NECESSITATE THE MINOR USE OF LAND FROM HISTORIC SITES**

HISTORIC SITE NAME

PROJECT NAME

PROJECT #, KEY #

COUNTY, IDAHO

Introduction

*Present an overview of:*

*Project*

*Historic Site*

*Preferred Alternative*

*Mitigation for the use of the Historic Site*

Applicability

The programmatic Section 4(f) evaluation may be applied to this project because it meets the following criteria:

1. The proposed project is designed to improve the operational characteristics, safety, and/or physical condition of existing highway facilities on essentially the same alignment.
  2. The historic site involved is located adjacent to the existing highway.
  3. The project does not require the removal or alteration of historic buildings, structures, or objects on the historic site.
- The project does not require the removal of archeological resources that are important to preserve in place.  
The impact on the historic site is minor, having no adverse effect.

Description of Project

*In-depth, detailed description of each Alternative under consideration*

*In-depth, detailed description of each Alternative in relation to Historic Site*

Purpose and Need of Project

*In-depth, detailed description for why project is necessary and what it will achieve. Use AASHTO standards for current conditions vs proposed improvements*

Description of 4(f) Historic Site

*In-depth, detailed discussion of the Historic Site:*

*History (why located here, when, by whom; importance to region)*

*Architectural/Structural description (include old photos; construction plans; repair & alteration history; move from another location)*

*National Register qualifications*

*Current condition*

Alternatives

The following alternatives avoid any use of the Historic Site:

1. Do nothing.
2. Improve the highway without using the Historic Site.
3. Build improved facility on a new location without using the Historic Site.

Findings

1. Do Nothing:

The Do Nothing Alternative has been studied. The Do Nothing Alternative ignores the basic transportation needs. For the following reasons, this alternative is not feasible and prudent: *Provide detail supporting any or all relevant points: a-e*

- a. Maintenance—existing deteriorated conditions and maintenance problems will not be corrected:
- b. Safety:
- c. Capacity deficiencies:
- d. Cost or community impact of extraordinary magnitude:
- e. Unusual or unique problems:

Improvement without using the Section 4(f) Historic Site:

Investigations have been conducted to improve the highway without using the Historic Site including alignment shifts, retaining walls and changes in geometric design standards. However, implementing such measures would result in: *Provide detail supporting any or all relevant points: a-d*

- a. Substantial, unusual or unique adverse community and/or environmental impacts:
- b. Substantial, unusual or unique increased roadway and/or structure costs:
- c. Unique or unusual engineering, traffic, maintenance and/or safety problems:
- d. Project will not meet identified transportation needs:

Build Alternative(s) on new location without using Historic Site:

It is not feasible and prudent to avoid the Section 4(f) Historic Site by constructing on a new alignment because:

*List each Alternative, addressing any or all relevant points: a-c for each*

- a. Existing transportation, safety or maintenance problems remain
- b. Substantial, unusual or unique adverse social, economic or environmental impacts
- c. Substantial, unusual or unique increase in costs or engineering difficulties

#### Mitigation

All measures to minimize harm: The proposed action includes all possible planning to minimize harm and to preserve the historic integrity of the site. *Detail all measures taken to minimize harm to Historic Site*

#### Coordination/Consultation

*Identify all public, agency, tribal, special interest groups consulted and results of consultation*

#### Conclusion

*Provide brief wrap-up of 'Findings' above:*

- 1. Do Nothing Finding
- 2. Finding 2
- 3. Finding 3 (each Alternative)
- 4. Mitigation

Attachments: *Include all that are useful to 4(f) documentation*

- a. Black-and-white photos of Historic Site (old [if available] and current)
- b. Historic documents *pertinent* to Site (blueprints, ownership, use, etc)
- c. Vicinity map; Site map
- d. Plans of Alternatives

## ***Exhibit 1800-13 Discovery of Cultural Resources During Construction***

### Construction Procedures for Discovery of Archaeological and Historical Objects

Following are General Special Provisions to be added to contract specifications as indicated. These are current as of March 6, 2000.

#### GENERAL SPECIAL PROVISIONS DIVISION 1

##### Protection and Restoration of Property

##### Archaeological and Historical Objects

*Use in projects where cultural remains within the project limits are discovered during project construction.*

It is national and state policy to preserve, for public use, historical and prehistoric objects such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint. The Contractor shall particularly watch for cultural remains such as bone, fire cracked rock, shell or other artifacts during [fill in details].

*Archaeological or historical objects, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Engineer of any such finds.*

The Engineer will contact the archaeologist who will determine if the material is to be salvaged. The Contractor may be required to stop work in the vicinity of the discovery until such determination is made. If the archaeologist determines that the material is to be salvaged, the Engineer may require the Contractor to stop work in the vicinity of the discovery until the salvage is accomplished.

##### Archaeological Salvage

Use in projects when survey indicates requirement for monitoring the project area during clearing, grubbing or excavation operations.

It is national and state policy to preserve, for public use, historical and pre-historical objects such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from an historical or scientific standpoint.

The project area may contain cultural resources. At the discretion of the ITD, clearing and grubbing operations will be monitored and archaeological testing conducted by the ITD's archaeological consultant and/or the assigned tribal monitor.

The Contractor shall notify the Engineer, in writing, at least ten days prior to the date the Contractor intends to begin clearing and grubbing operations. The Contractor may be required to conduct clearing and grubbing operations in a manner that will reserve portions of the work area for testing and exploratory operations.

#### ***Exhibit 1800-14 Archaeological Resources Protection Act Permit Process on Federal Lands (Non-Tribal)***

The Archaeological Resources Protection Act (ARPA) requires a permit for excavation or removal of archaeological resources from federal or Indian lands (43 CFR 7.6-7.11). Procedures for obtaining ARPA permits for work on federal lands include:

1. During the annual review, the Districts will identify potential projects crossing federal lands that may need ARPA permits.
2. When a Task Assignment Document (TAD) using the HQ Environmental Office On-Call Agreements is approved for the project, the Archaeological Consultant will complete an application for an ARPA permit and send it to the Federal Agency involved.
3. Each agency will have its own internal process in granting permits, thus turnaround time for each application could be different.
4. Agencies will respond to the archaeology consultant via a letter giving approval.
5. The archaeological consultant will do surveys and, when the potential exists that a resource may be present, cultural resource testing. When testing indicates there is a resource present that the project will impact, data recovery may be recommended. A second ARPA permit may be required for data recovery, and the above process is repeated.

## **Exhibit 1800-15 Presidential Executive Order 13175**

### Presidential Executive Order 13175

Consultation and Coordination With Indian Tribal Governments By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfounded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

- (a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.
- (b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.
- (c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).
- (d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

- (a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.
- (b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.
- (c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

- (a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.
- (b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.
- (c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:
  - (1) encourage Indian tribes to develop their own policies to achieve program objectives;
  - (2) where possible, defer to Indian tribes to establish standards; and
  - (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation.

- (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.
- (b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:
  - (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
  - (2) the agency, prior to the formal promulgation of the regulation,
    - (A) consulted with tribal officials early in the process of developing the proposed regulation;

- (B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
- (C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,
  - (1) consulted with tribal officials early in the process of developing the proposed regulation;
  - (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
- (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore land, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

#### Sec. 6. Increasing Flexibility for Indian Tribal Waivers.

- (a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- (b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- (e) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.
- (d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

#### Sec. 7. Accountability.

- (a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- (b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.
- (c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

#### Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

#### Sec. 9. General Provisions.

- (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.
- (b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).
- (c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.
- (d) This order shall be effective 60 days after the date of this order.

#### Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

(Presidential Sig.) THE WHITE HOUSE, November 6, 2000.

**Exhibit 1800-16: National Programmatic Agreement for Implementation of Transportation Enhancement Activities (6/11/97)**

NATIONWIDE PROGRAMMATIC AGREEMENT AMONG THE FEDERAL HIGHWAY ADMINISTRATION (FHWA), THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS (NATIONAL CONFERENCE OF SHPOs), AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP), FOR IMPLEMENTATION OF TRANSPORTATION ENHANCEMENT ACTIVITIES

WHEREAS, Section 316(2) (23 U.S.C. 133(e)(5)(B)) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities; and

WHEREAS, Section 1007(a) (23 U.S.C. 133(b)(8)) of the ISTEA authorizes the expenditure of Federal Surface Transportation Program funds for transportation enhancement activities; and

WHEREAS, Section 1007© (23 U.S.C. 101(a)) of ISTEA defines the term “transportation enhancement activities” to include a variety of project categories that can be beneficial to the preservation of historic properties; and

WHEREAS, the FHWA has determined that transportation enhancement activities may have effects upon properties included in or eligible for the National Register of Historic Places and has consulted with the ACHP, and the National Conference of SHPOs pursuant to 36 CFR 800.13 of the regulations implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, the signatories to this agreement desire to expedite the necessary historic preservation review for transportation enhancement activities beneficial to historic preservation and thereby encourage the use of transportation enhancement funds for historic preservation purposes; and

WHEREAS, the signatories to this agreement recognize that although most projects advanced as transportation enhancement activities should benefit historic properties, the State Transportation Agency (STA) shall make known any findings regarding effects to historic properties through its normal public participation process; and WHEREAS, the STA, after consultation with the individual State Historic Preservation Officer (SHPO), may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office.

NOW, THEREFORE, the FHWA, the ACHP, and the National Conference of SHPOs, pursuant to § 316(2) of the National Highway System Designation Act of 1995, agree that transportation enhancement activities shall be implemented in accordance with the following stipulations to satisfy the FHWA’s section 106 responsibilities for all individual undertakings of transportation enhancement activities which may affect historic properties in any State where this programmatic agreement is activated.

**STIPULATIONS**

The FHWA shall ensure that the following measures are carried out:

*I. Expediting the Processing of the Following Categories of Transportation Enhancement Activities:*

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including conversion and use for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archaeological planning and research.
10. Mitigation of water pollution due to highway runoff.

**II. Identifying and Evaluating Historic Properties**

A. The STA will be responsible for identifying and evaluating all historic properties within each activity’s area of potential effect, and evaluating eligibility for the National Register of Historic Places, in consultation with SHPO, following the procedures set out in 36 CFR 800.4.

B. The STA, in consultation with the SHPO, may encourage or require project sponsors to include historic property documentation or survey results as part of the transportation enhancement activity application.

**III. Determining Effect on Historic Properties**

The STA will assess the effects of the proposed transportation enhancement activities on historic properties by applying the Criteria of Effect and Adverse Effect (36 CFR 800.9). The STA will ensure that the SHPO is provided adequate documentation to review the STA’s effect determination. The SHPO will promptly inform the STA if more information is necessary to make its determination.

A. No Effect



If the STA determines that the undertaking will have no effect on historic properties, it will notify the SHPO in writing. The SHPO will review this determination and provide written comments to the STA within 15 working days after receipt of the STA's finding and adequate documentation. If the SHPO concurs with the STA's no effect determination, or fails to provide comments within 15 working days, the undertaking may proceed as planned. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for non-concurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no effect on historic properties or shall apply the Criteria of Adverse Effect and continue the review of the project pursuant to Stipulation III.B. of this agreement.

#### B. No Adverse Effect and Adverse Effect

1. If the STA determines that the undertaking will have no adverse effect on historic property, it will notify the SHPO in writing. The SHPO shall review this determination and provide written comments to the STA within 30 days after receipt of the STA's finding and adequate documentation. a. If the SHPO concurs with the STA's no adverse effect determination or fails to provide comments within 30 days, the STA shall document that finding, which shall be available for public inspection, and proceed with the activity as planned without further review by the ACHP. b. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no adverse effect on historic properties or shall proceed in accordance with Stipulation III.B.2 or III.B.3.

2. If the STA and the SHPO cannot agree that the proposed transportation enhancement activity will have no adverse effect, or if they agree there is an adverse effect, then the STA shall notify the FHWA and the FHWA shall complete the section 106 process in accordance with 36 CFR 800.5 and 800.6, unless stipulation III.B.3 applies.

3. Transportation enhancement activities may advance without further comment from the ACHP, provided that the FHWA and the SHPO concur with the STA that: (a) the benefits to historic property(ies) outweigh any minor adverse effects (e.g., when a proposed rehabilitation substantially meets the Secretary of the Interior's Standards for Preservation Projects); and that (b) agreed upon measures will be implemented to mitigate those effects (e.g., appropriate recordation measures). The STA shall document the effect finding, which shall be available for public inspection.

#### IV. Amending this Programmatic Agreement, If Requested

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accordance with 36 CFR 800.13. No amended agreement shall take effect until execution by all parties, and all the STAs and SHPOs have been duly notified.

#### V. Processing of Any Public Objections

If at any time during the implementation of the measures contained in this Agreement, an objection to any such measure or its manner of implementation should be raised by an interested person, as that term is defined at 36 CFR 800.1©(2), the FHWA shall consult with the objecting party, the SHPO, and, as needed, the ACHP to resolve the objection. In light of the ACHP's views, the FHWA should reconsider the finding. An objection by the public, however, does not require the FHWA to suspend action on an undertaking. If the objection concerns the eligibility of a property for the National Register, the FHWA may refer the matter to the Keeper of the National Register, if it considers referral appropriate.

#### VI. Resolving Disputes Among Parties

Should any party to this Agreement object within 30 days to any action pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all relevant documentation to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

A. Provide the FHWA will recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or

B. Notify the FHWA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.6©(2) with reference to the subject of the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

#### VII. Monitoring Transportation Enhancement Activities

The SHPO and the ACHP may monitor any activities carried out pursuant to this Agreement, and the ACHP will review such activity if so requested. The FHWA will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

#### VIII. Terminating this Programmatic Agreement

Any party to this Programmatic Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

#### IX. Establishing Duration of this Programmatic Agreement

This Programmatic Agreement will continue in full force until such time as it is terminated or funds for projects undertaken pursuant to this Programmatic Agreement are no longer authorized or available.

#### X. Submitting a Report

The STA will compile a list of projects that are processed under this programmatic agreement. This list may be included with or incorporated into periodic reports provided to the FHWA. The list shall include, at minimum, the project name, location, and the amount of authorization. The STA will provide a copy of the list to the FHWA division office either periodically throughout the year,

or by March 31, each year beginning the year after implementation of this programmatic agreement. The FHWA division will provide copies of the list to the ACHP and the National Conference of SHPOs by April 21.

XI. Failing to Comply with this Programmatic Agreement

In the event the FHWA does not carry out the terms of this Agreement, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidence that the FHWA has afforded the Council a reasonable opportunity to comment on its Transportation Enhancement Program and that the FHWA has taken into account the effects of the Transportation Enhancement Program on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: (original signed by person named below)

Date: 5/1/97

Chairman

FEDERAL HIGHWAY ADMINISTRATION

By: (original signed by person named below)

Date:

Acting Administrator

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS By: (original signed by person named below)

Date: April 29, 1997

President

November 16, 1999

SUBJECT: Department of Transportation Programs, Policies, and Procedures  
Affecting American Indians, Alaska Natives, and Tribes

1. PURPOSE. To ensure that programs, policies, and procedures administered by the Department of Transportation (DOT) are responsive to the needs and concerns of American Indians, Alaska Natives, and tribes.

2. REFERENCES. This list is not all-inclusive but is intended to help in the understanding of this DOT Order.

a. Executive Orders and Memoranda:

(1) Executive Order 12866, Regulatory Planning and Review (58 Federal Register 51739, October 4, 1993), dated September 30, 1993.

(2) Executive Order 12875, Enhancing the intergovernmental Partnership (58 Federal Register 58093, October 28, 1993) dated October 26, 1993.

(3) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 Federal Register 7629, February 16, 1994), dated February 11, 1994.

(4) Executive Order 13007, Indian Sacred Sites (61 Federal Register 26771, May 29, 1996), dated May 24, 1996.

(5) Executive Order 13021, Tribal Colleges and Universities (61 Federal Register 54929, October 23, 1996) dated October 19, 1996

(6) Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 Federal Register 19885, April 23, 1997) dated April 21, 1997.

(7) Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 Federal Register 27655, May 19, 1998) dated May 14, 1998.

(8) Executive Order 13096, American Indian and Alaska Native Education (63 Federal Register 42681, August 11, 1998) dated August 6, 1998.

(9) Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes, Memorandum for the Heads of Executive Departments and Agencies, signed by the President, April 29, 1994.

(10) Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments (59 Federal Register 22951, May 4, 1994). (11) Office of Management and Budget Memorandum M-95-20, September 21, 1995.

Distribution: All Secretarial Offices: All Heads of Administration OPI: s-3

b. DOT Orders:

(1) DOT 1000.12, Implementation of the Department of Transportation's Title VI Program, dated January 19, 1977.

(2) DOT 1300.1, ONE DOT Management Strategy, dated September 18, 1998.

(3) DOT 13252C, DOT Correspondence Policy, dated October 29, 1993.

(4) DOT 5610.1 C, Procedures for Considering Environmental Impacts, dated September 18, 1979.

(5) DOT 5610.2, Environmental Justice in Minority Populations and Low-Income Populations, dated April 4, 1997.

C. Statutes:

(1) Antiquities Act of 1906, as amended, 16 U.S.C. 35 431-433 (1998).

(2) Historic Sites Act of 1935, 16 U.S.C. 59 461-467.

(3) National Historic Preservation Act of 1966, as amended, 16 U.S.C.

§§ 470-470w-6.

(4) National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, 4321 note, 4331-4335, 4341-4346b, 4347.

(5) Alaska Native Claims Settlement Act of 1971 (ANCSA), as amended, 43 U.S.C. §§ 1601-1629g.

(6) Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. § 450.

(7) American Indian Religious Freedom Act of 1978, as amended, 42 U.S.C.

§ 1996.

(7) Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C.

§§ 1801-1815.

(9) Navajo Community College Assistance Act of 1978, 25 U.S.C. § 640a.

(10) Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 5s 3001-3013.

(11) Federally Recognized Indian Tribe List Act of 1994, as amended, 25 U.S.C. 93 479a and 479-a-1 (63 Federal Register 71941, December 30, 1998).

(12) Tribal Self-Governance Act of 1994, 25 U.S.C. s458aa - 458hh.

(13) Equity in Educational Land Grant Status Act of 1994, 7 U.S.C. 5 301 note. Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 602, 658, 658a - 6589, and Chapter 25.

(14) Archeological Resources Protection Act of 1979, as amended, 16 U.S.C.

§§ 470aa - 470mm.

(15) Religious Freedom Restoration Act of 1992, 42 U.S.C. § 2000bb -2000bb- 4.

(17) Buy Indian Act (as amended 1994), 25 U.S.C. § 47.

(18) Transportation Act of 1966, as amended 49 U.S.C. 5 303 (formerly known as Section 49.

(19) Intergovernmental Personnel Act 5 U.S.C. 9 4701 (allows temporary employment of tribal government officials) and 42 U.S.C. 3s 4771- 4772 (authority allowing tribal officials to participate in Federal training)

(20) Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. Q 2000d, et seq.

3. DEFINITIONS. a. American Indian and Alaska Native. “American Indian” refers to the term used in the OMB Statistical Policy Directive 15, “Race and Ethnic Standards for Federal Statistics and Administrative Reporting” to identify descendants of the populations indigenous to North America at the time of European discovery. American Indian includes Alaska Natives. “American Indian” however, is commonly used to refer to individuals of such populations residing in the lower 48 States. “Alaska Native” came into use with the passage of the Alaska Native Claims Settlement Act of 1971. Alaska Native is the usage preferred according to results of the Census Bureau’s Race and Ethnic Targeted Test (RAETT), included in the Office of Management and Budget’s Recommendations from the Interagency Committee for the Review of the Racial and Ethnic Standards to the Office of Management and Budget Concerning Changes to the Standards for the Classification of Federal Data on Race and Ethnicity; Notice and Proposed Request for Comments, 62 Federal Register 36873-36946 (July 9, 1997). Alaska Native refers to Alaskan Indians (including American and Canadian Indians living in Alaska), Eskimo, and Aleut. Note that “Alaska Native” and “American Indian” is not necessarily equivalent to the terms “tribe” and “tribal member.” Therefore, since the application of specific statutes and executive orders vary, the definitions contained within these laws should be referred to for additional information.

b. Consultation. Refers to meaningful and timely discussion in an understandable language with tribal governments during the development of regulations, policies, programs, plans, or matters that significantly or uniquely affect federally recognized American Indian and Alaska Native tribes and their governments. The specific guidelines and instructions for implementing the Un-funded Mandates Reform Act of 1995 found in OMB Memorandum M-95-20 and the recommendations in the Presidential Memorandum on, Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994, also provide general principles for intergovernmental consultation under this Order.

c. DOT Component. Refers to each agency, office, mode, administration or other entity of the Department of Transportation.

d. Environmental Justice. Refers to avoiding, minimizing, and mitigating disproportionately high and adverse effects of DOT policies, programs, and activities on minority populations and low-income populations.

e. Federally Recognized Tribe. Refers to the tribal government and tribal members of any tribe, band, pueblo, nation, or other organized group or community including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.), or that is acknowledged by the Federal Government to constitute a tribe with a government-to-government relationship with the U.S. and eligible for the programs, services, and other relationships established by the U.S. for Indians because of their status as Indians.

f. Government-to-Government Relations. Refers to the protocol for communicating between the Federal Government and tribes as sovereigns in accordance with the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments dated April 29, 1994. The first point of contact should be the Chairman of the Tribal Council or the President of the Tribe.

g. Indian Preference. Refers to a preference, typically in employment and contracts, based on the political relationship between the U.S. and members of federally recognized tribes. Indian preference applies only to members of federally recognized tribes and not to individuals who are racially classified as “Indians” but who are not members of federally recognized tribes.

h. ONE DOT Management Strategy. Refers to the Department’s management strategy and intermodal collaboration that builds on the strengths of DOT modes and the Office of the Secretary of Transportation (OST) to achieve the Department’s mission and goals as prescribed in, paragraph 2b(2).

i. Tribe. The term “tribe,” when used in its ethnographical sense to describe a cultural group, does not necessarily confer legal status on a tribe. Therefore, for purposes of this Order, the term “tribe” refers to “Indian tribe” or “Federally recognized tribe” and may also refer to State recognized tribes which are not Federally recognized but which are eligible for certain Federal benefits and privileges under specific Federal laws.

j. Tribal Colleges and Universities. Refers to those institutions cited in Section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note) and any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 et seq.) and Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978 (Public Law 95-471) Title II (25 U.S.C. 640a note).

k. Tribal Government. Refers to the recognized government of a tribe.

l. Tribal Member. Refers to a member of a tribe as determined by tribal membership rules.

m. Tribal Sovereignty. Refers to the unique legal status of federally recognized Indian tribes as set forth in the U. S. Constitution, treaties, and Federal statutes, executive orders, and court decisions, which establish these tribes, as domestic dependent nations subject to the protection of the U.S. Government. As domestic dependent nations, these tribes exercise inherent sovereign powers over their members and territory unless explicitly removed by Congress.

n. Trust Resources. Refers to natural resources such as, but not limited to, water, fish, wildlife, air, minerals, natural gas, oil, forests, plants, land, rivers, cultural resources, that are held in trust by the Federal Government on behalf of the federally recognized tribes.

#### 4. BACKGROUND

a. American Indians and Alaska Natives have a special place in our Nation’s history and culture, and certain laws and policies apply to them.

b. The Federal Government has a unique legal and political relationship with federally recognized tribes that have been found by the U.S. Supreme Court to be sovereign, domestic dependent nations, subject to the protection of the United States.

- c. The Federal Government has a moral obligation of the highest responsibility and trust for resources held by the Federal Government on behalf of federally recognized tribes and their members, who are properly concerned that trust resources should be conserved for the benefit of present and future generations.
  - d. The Federal Government, in carrying out its trust responsibility, has the duty to act in good faith and loyalty to the best interests of American Indians, Alaska Natives, and tribes, among these being their interest in self-government and that it is the express policy of Congress and the President to strengthen tribal self-governance.
  - e. In 1975, Congress passed the Indian Self-Determination and Education Assistance Act (Public Law 93-638). This Act recognized the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of Federal services.
  - f. On April 29, 1994, a Presidential Memorandum was issued, entitled, "Government-to-Government Relations with Native American Tribal Governments." This Memorandum directed all Executive Departments and Agencies to implement activities affecting Indian tribal rights or trust resources by consulting with tribes in a knowledgeable, sensitive manner respectful of tribal sovereignty.
  - g. Executive Order 13084, dated May 14, 1998, entitled, "Consultation and Coordination with Indian Tribal Governments," directs Federal agencies to work with Indian tribes by: establishing regular and meaningful consultation and collaboration with them on Federal matters that significantly or uniquely affect their communities; reducing the imposition of un-funded mandates on them; and streamlining the application process and availability of waivers to them.
5. POLICY. In conducting and administering activities and programs, and fostering relationships with American Indians, Alaska Natives, and tribes, all components within DOT must, to the extent practicable and permitted by law: a Carry out DOT's mission, strategic goals, policies, programs, and activities affecting American Indians, Alaska Natives, and tribes in a manner that reflects a high commitment to the ONE DOT management strategy.
- b Consult with Indian tribes before taking any actions that may significantly or uniquely affect them. This process may be supplemented by seeking information from other relevant sources and may be required by specific laws, regulations, and executive orders. This includes, but is not limited to, traditional leaders or elders and associations of tribal officials.
  - c Work with federally recognized tribes and their designated representatives on a government-to-government basis respecting their rights to represent their respective interests.
  - d Recognize American Indian and Alaska Native statutory preferences in employment, Federal financial assistance arrangements and contracting, subject to eligibility.
  - e Assess the environmental impact of ROT activities on tribal trust resources and ensure that tribal interests are considered before DOT activities are undertaken. This assessment must include ensuring that the concerns of federally recognized tribes, regarding the potential impact on trust resources, are properly addressed in agency policies, programs, and activities.
  - f Respond effectively to the transportation concerns of American Indians and Alaska Natives related to environmental justice, children's safety and environmental health risks, occupational health and safety, and other environmental matters.
  - g Streamline DOT procedures for working directly with tribes on activities that effect trust resources or tribal self-governance of the tribes.
  - h Seek tribal representation in relevant DOT sponsored meetings, negotiated rulemaking efforts, forums, advisory committees, listening sessions, focus groups, public surveys, research protocols, and data collection activities.
  - i Design solutions and tailor DOT programs as appropriate to address specific or unique needs of tribal communities.
  - j Consider opportunities under the Intergovernmental Personnel Act for temporarily hiring tribal members and publicizing eligibility of tribal members to participate in Federal training activities
  - k Foster opportunities such as internships, fellowships, scholarships, or other related DOT programs in education and research for American Indians, and Alaska Natives.
  - l Include tribal colleges and universities in DOT educational, research, and program activities as prescribed in paragraph 2a(5). This may also include helping the institutions through such activities as providing DOT personnel as temporary instructors and providing surplus property and equipment.
  - m Support government-wide educational efforts aimed at American Indian and Alaska Native students such as improving literacy and mathematics skills and increasing high school completion rates.
  - n Ensure non-discrimination in employment of and services to American Indians and Alaska Natives.
  - o Integrate information about Federal laws and policies on relations with American Indians and Alaska Natives with DOT training.
  - p Treat correspondence from leaders of federally recognized tribes in the same manner as congressional correspondence as prescribed in the DOT Correspondence Manual (refer to paragraph 2b(3) of this document).
  - q Cooperate with other Federal, State, or local agencies to accomplish government-to-government relations, carryout consultation, address regulatory issues, and solve problems in accordance with the policy objectives above.

6. **RESPONSIBILITIES OF EACH DOT COMPONENT.** In carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes, each DOT component must to the extent practicable and permitted by law:

a. Ensure that an effective mechanism is in place to achieve the following goals:

- (1) Improve communication with American Indians, Alaska Natives, and tribes to respond more effectively to their transportation concerns.
- (2) Develop an intergovernmental consultation process for that component in coordination with the designated office established under paragraph 7 of this Order.
- (3) Adapt processes to recognize American Indian, Alaska Native, and tribal culture and traditions.
- (4) Address American Indian, Alaska Native, and tribal transportation issues and concerns under the ONE DOT management strategy.
- (5) Ensure consistency within procedures, regulations, and guidance of the various DOT components for addressing American Indian, Alaska native, and tribal transportation issues.
- (6) Maximize cooperation and coordination with the OST, other DOT components, other Federal agencies, and appropriate public and private organizations on transportation matters affecting American Indians, Alaska Natives, and tribes.
- (7) Share information about DOT components, programs, activities, and accomplishments as they relate to American Indian, Alaska Native and tribal matters.
- (8) Maximize participation of tribal colleges and universities in DOT education, employment, and mission-related programs.
- (9) Avoid infringing on tribal lands and accommodate access to and ceremonial use of sacred sites and ancestral burial grounds on Federal and tribal lands to the extent practicable and consistent with essential agency functions.
- (10) Invite participation of American Indian, Alaska Native or other tribal employees of DOT to help achieve communication goals.

b. Periodically review efforts to achieve the goals listed in paragraphs 6a(1) through 6a(10) and take appropriate action, as necessary, to improve accomplishment of established goals.

c. Designate a point of contact, experienced in working with tribes or knowledgeable in laws, regulations, and policies regarding federally recognized American Indians, Alaska Natives, and tribes, to serve as a resource for the Department.

7. **DESIGNATED DOT OFFICE.** The Secretary will designate an office to facilitate effective implementation of the policies and requirements of this Order. In this regard, the designated office will advise and make recommendations to the Secretary of Transportation on American Indian, Alaska Native, and tribal policies, issues, programs, and activities. The designated office's mission and responsibilities are further described below.

a. **Mission.** To facilitate a consistent Departmental policy, and strategy relative to American Indian, Alaska Native, and tribal transportation matters to the extent practicable and permitted by law.

b. **Duties.** The designated DOT Office must perform the following duties:

- (1) Provide Departmental oversight, guidance, direction, and recommendations to the Secretary and DOT components with regard to implementing this Order and achieving the goals listed in paragraphs 6a(1) through 6a(10) of this Order. This includes providing summary information and/or reports on the Department's efforts as described in paragraph 6b.
- (2) Educate DOT employees on American Indian, Alaska Native and tribal laws, policies, programs, activities, culture, and traditions.
- (3) Stress the importance of tribal involvement in transportation planning and decision-making.
- (4) Ensure tribes' involvement in DOT decision-making that significantly or uniquely affects them.
- (5) Encourage direct relationships with the tribes.
- (6) Exercise creativity and flexibility in fostering partnerships among the tribes, States, and local governments.
- (7) Ensure implementation of the goals listed in paragraphs 6a(1) through 6a(10) of this Order through the following:

(a) **Improve Communication.**

1. Maintain a current directory of DOT programs, including a list of contact persons, for which American Indians, Alaska Natives, and tribes are eligible.
2. Coordinate and promote innovative partnerships among Federal, State, and local government programs and activities that will have the optimal positive effect on American Indians, Alaska Natives, and tribes.
3. Serve on the White House Domestic Policy Council/Native American Subcommittee.
4. Participate in interagency forums on American Indian and Alaska Native issues or concerns.
5. Seek opportunities for training and information exchange via meetings, conferences, workshops, and forums.
6. Facilitate communication and dialogue among Federal, State, tribal representatives, and other government entities.
7. Ensure the DOT website focusing on DOT programs, policies, activities, and issues affecting American Indians, Alaska Natives, and tribes convey the ONE DOT message.
8. Determine through information or recommendations from tribes the best communication channels to disseminate DOT information.
8. Establish a mechanism for initiating contact and providing information about DOT programs, policies, and activities to tribal officials using their preferred protocol.

(b) Employ the ONE DOT Management Strategy.

1. Facilitate full and open internal and external communications that allow DOT to speak with one voice concerning American Indian, Alaska Native and tribal transportation concerns.
2. Maintain a point of contact to address, coordinate, and resolve American Indian, Alaska Native, and tribal policy, programs, and activities from a ONE DOT perspective while providing for maximum participation by DOT components and recognizing the unique nature of the programs and operations of each component.

(c) Improve Regulations and Guidance.

1. Assist and make recommendations concerning the development, establishment, and maintenance of Departmental American Indian, Alaska Native, and tribal policy, guidance, procedures and regulations.
2. Participate in Department-wide review and resulting modification of existing regulations affecting American Indian, Alaska Natives, and tribes. This Order is intended to improve the internal management of the Department, consistent with paragraph 1 of this Order, and is not intended to create any right enforceable in any cause of action by any party against the U.S., its agencies, officers or any person. In addition, this Order should not be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its operating administrations, its officers; or any other person.

SECRETARY OF TRANSPORTATION

***Exhibit 1800-18 Programmatic Agreement Regarding Minor Highway Improvement Projects***



6-25-07.pdf (634  
KB)





Sent Via E-mail

# Memorandum

Subject: **ACTION:** Guidance for Determining *De Minimis*  
Impacts to Section 4(f) Resources

Date: December 13, 2005

**Original Signed by:**

From: Cynthia J. Burbank  
Associate Administrator, Planning, Environment  
and Realty, FHWA  
Brigid Hynes-Cherin, Associate Administrator  
for Planning and Environment, FTA

Reply to  
Attn. of:  
HEPE

To: FHWA Division Administrators  
FTA Regional Administrators

Section 6009(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, amended existing Section 4(f) legislation at Section 138 of Title 23 and Section 303 of Title 49, United States Code, to simplify the processing and approval of projects that have only *de minimis* impacts on lands protected by Section 4(f). This is the first substantive revision of Section 4(f) legislation since passage of the U.S. Department of Transportation Act of 1966. This revision provides that once the U.S. Department of Transportation (DOT) determines that a transportation use of Section 4(f) property, after consideration of any impact avoidance, minimization, and mitigation or enhancement measures, results in a *de minimis* impact on that property, an analysis of avoidance alternatives is not required and the Section 4(f) evaluation process is complete.

Section 6009(c) of SAFETEA-LU requires the U.S. DOT to conduct a study and issue a report on the implementation of the new Section 4(f) provisions. The study will include evaluation of: 1) the implementation processes developed and the resulting efficiencies; 2) the post-construction effectiveness of any impact mitigation and avoidance commitments adopted as part of the projects; and 3) the number of projects determined to have *de minimis* impacts, including information on the location, size, and cost of the projects. The initial study and report will address the first three years of implementation. The Federal Highway Administration (FHWA) Division and Federal Transit Administration (FTA) Regional Offices should maintain a record of the projects for which *de minimis* findings were made and track the progress of those projects in order to facilitate the future evaluation of the post construction effectiveness of any commitments of mitigation made as part of the *de minimis* finding. Additional guidance and information regarding the study and report will be provided in the future.

